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ABSTRACT

Reflecting the management advocacy position taken by school boards in collective bargaining procedures, this report analyzes New Jersey school labor negotiations laws and practices as of 1978. Terms and issues of special interest are defined and explained. Topics include contract language, good faith bargaining, past practice, negotiations committees, grievances, bargaining scope, terms and conditions of employment, and monitoring the collective bargaining agreement. The Public Employment Relations Law, called the PERC Law because it established the Public Employment Relations Commission, is summarized and analyzed. A sample New Jersey Education Association agreement is included, together with marginal commentary highlighting problem areas and reflecting recent legislation, court decisions, and economic factors. A short bibliography containing relevant books, bulletins, films, pamphlets, reports, and periodicals is included. (Author/JM)

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Negotiations 1978

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Introduction

Both stability and change mark educational negotiations. The concepts of the give and take of bargaining, of good faith, of strike threat and response were around long before school boards even believed unionization would come to the teaching ranks. They provide the stabilization.

The change has occurred in attitudes toward bargaining. In the first years of bargaining, both boards and employee organizations may have looked upon negotiations as bloodless warfare, a series of battles always for the greater good.

Boards and unions, fatigued with what often seemed meaningless exercize, have settled back into more standard management-labor behavior. On occasion, a particular union representative, seeking to gain the attention of a variety of people, succeeds in harming relationships built up over time. But we have learned what conduct is expected of each other and how far away from that conduct we can move before there is unacceptable friction.

In 1978, school board members will still desire to protect their ability to oversee the administration of the schools. They will still contend with less-than-satisfying budgets and all those other pressures which complicate bargaining. They seem to be better prepared to bargain, to maintain sensible but hard positions in a good faith environment, to work around the posturing across the table, to reach agreements where they thought there could be none. All of these characteristics are encouraging. Each can be wiped out, leaving school board members with all of the frustrations and none of the satisfactions of labor relations.

We, too, have had stability and change in this series. This book appears each year and is referred to, complimented and criticized. It has always contained an analysis of that most mysterious of documents, the Sample Agreement.

Over the past years, the emphasis in the series has moved to articles of specific interest. We continue that this year. The analysis, rewritten to meet 1977-1978 needs, has been joined by a similar analysis of the PERC law itself.

Articles on past practice, caps, and the supervisory role in negotiations have been added. Throughout Negotiations 78, we've endeavored to refer to other publications or articles which might be of assistance.

We believe Negotiations 78 reflects the responsible management advocacy position taken by school boards. But nothing in it can replace the awareness and abilities of individual school board members and administrators.

Bruce Taylor
Director of Labor Relations

Negotiation: Style AND Substance

Very large organizations have the luxury of developing specialists to handle any aspect of a problem. Break the problem down to "subparts." Give "subpart A" to "subpart specialist A" and you're in business.

Now listen in on this conversation: *"I spent thirty meetings at the table. I really fooled those guys. Some tactics here, a little acting there, some well-placed zingers once in awhile. We got a contract they'll never forget!"* Someone responds, *"Isn't your board the one with the 17 arbitration cases and the picketing by administrators?" "That's us. But none of that has anything to do with my negotiations."*

Perhaps one of his closest friends will tell him otherwise. That school board hires a superintendent who is responsible for contract enforcement. It uses common sense at the table and combines it with instruction and experience. It is aware of the dangers of contract language. But it does not adequately perform its function until it puts language awareness, table tactics and contract maintenance together.

The importance of contract language has been emphasized in previous issues of this series as well as other NJSBA publications. (Negotiations 1977, pp. 1-3).That warning - that contract language can be frustrating or even destructive to an educational system or to a budget - has been heeded. Boards know that at the same time they share information with each other that they must make agreements they can individually live with. There are no "average" contracts. There are agreements which were the best possible or the worst possible under certain circumstances.

Boards have learned to distinguish between the critical and the harmless in terms of settlement. Most importantly, more boards have concluded agreements which recognized real personnel problems without sacrificing educational control.

The Sample Agreement is packed with questionable language. Its appearance in a school district these days probably means that the union rep doesn't know what he or she is doing. But your analysis of contract language shouldn't stop with our analysis of the Sample Agreement. It should merely start there.

Are there certain new language demands which share the same dangers as old Sample Agreement demands? What do your supervisors say about the union's proposed language? Do acceptable clauses become unacceptable when combined with others? For example, a requirement that the board make no involuntary transfers after June 1st might be acceptable. Combining it with a clause which requires that all teachers be given the opportunity to apply and be considered for transfers as late as July 1st creates at least a practical problem. Just as you put all your compensation concessions together in one package, so you should put language on similar topics together to see if there's something else lurking in there.

Board members shouldn't know more about contract language dangers than administrators, especially middle administrators. But they often do. Months of analysis and table work can be negated by one under-trained administrator. The "management" concept (as in "management-labor relations") needs work and that should start at the individual district level.

Even if you utilize a professional negotiator, you should avoid becoming a "specialist" in one collective bargaining area. The approach to handling teacher grievances applies to bus driver grievances and the method for costing out health insurance doesn't usually differ from person to person.

In all negotiating situations you should be alert to contract language, be prepared to bargain, use common tactics (including timing of offers) effectively and hand over administration of the agreement to an administrative staff trained in labor relations. Then if you have 17 arbitration cases pending you can put the blame on someone else.

The Meaning of Good Faith Bargaining

1. **The determination of whether a school board and an employee organization have bargained in good faith will have to be made on a case-by-case basis.**

The standard used to determine whether the parties have bargained in bad faith revolves around one question: Does the bargaining which has taken place indicate that one or both parties came to the negotiations table with no desire to reach a mutual agreement on the contract? The question is easy to ask, the answer is a good deal harder to provide. Unless a party has absolutely refused to meet with and discuss negotiable issues with the other side, the Public Employment Relations Commission must analyze the entire course of bargaining and reach a decision. The difficulty is that no one position can serve as an indicator of bad faith bargaining, and PERC's investigators will not be equipped with motivation machines capable of revealing the true intentions of a party when it entered bargaining. The "totality of conduct" approach, as it has been called, will involve these observations, among others: Did a party refuse to meet at reasonable times to negotiate? Did a party seek extensive postponement of meetings? Did a party refuse absolutely to discuss the other side's proposals?

Boards should be assured that they have the right to maintain positions sincerely held. In a private sector case that reached the federal court level, the court noted: *"The employer may have either good or bad reasons for insistence on the inclusion or exclusion of a proposed contract term. If the insistence is genuinely and sincerely held, if it is not mere window dressing, it may be obtained forever though it produces a stalemate."* And that leads to the next point:

2. **The obligation that a party bargain in good faith does not require the party to make a concession on any specific issue.**

If one party makes a demand, the other side is not required to make some movement toward that position. For example, the union may demand dental care. The board has estimated the cost of dental care and decides that its cost would be prohibitive. The board rejects the union's demand. The board does not have to offer a modified dental plan to meet its obligation to bargain in good faith. The board might respond that a dental plan would be acceptable if there was a concurrent lessening of the salary increase or if certain other changes could be made in the terms of the contract, but even these actions are not required by law.

Quite clearly, the object of both parties at the bargaining table should be to reach a mutually acceptable agreement. Suce a goal is not inconsistent with the well-established principle that no party can be forced to concede on a point it believes unacceptable. The appearance of bad faith bargaining increases, naturally, as one party rejects more of the other side's demands outright. But a realistic analysis of bargaining situations in public education in New Jersey would reveal very little bad faith bargaining on the part of boards of education.

3. **The obligation of the union to bargain in good faith is no different than the obligation of the board to do so.**

As more boards learn that counter-demands and counterproposals are critical parts of their bargaining position, those boards are constantly accused of bad faith bargaining by the unions with which they are negotiating. Such charges indicate a basic misunderstanding of the bargaining process by unions. In fact, the obligation of the board to fairly consider the proposals of the union is no greater than the union's obligation to fairly consider the board's proposals. And boards are not limited to reacting to the demands of the union. They may, and should, make initial proposals to change contract terms in order to alleviate unacceptable burdens placed upon them by the current contract or to clarify certain language in the contract. Counterproposals and board demands have a rightful place in the bargaining process.

The Meaning of Past Practice

Past practice between a school board and a union is often cited by arbitrators when they reach their decisions. A school board with an understanding of past practice can better predict the outcome of a grievance arbitration linked to past practice, and prepare its case accordingly.

Past practice is used by an arbitrator to give meaning to the intent of the parties. The arbitrator's assignment is to resolve a problem that has arisen between the board and the union. Whenever possible, the arbitrator will make his decision based upon the explicit words of the written agreement. But if the contract does not provide the information the arbitrator needs to make his decision, he must look elsewhere for guidance. Past practice contains a body of information that can identify for the arbitrator the intent of the parties.

Past Practice is Part of the Agreement

An arbitrator, in a decision involving the Trenton Board of Education (Mercer County), stated:

> An enforceable labor agreement, unless expressly stated to the contrary, consists at the time of its execution of the written agreement itself and the then existing valid and binding Past Practices which have not been changed, altered, or modified by the parties. [Emphasis in the original]

Arbitrators do not think that to rely upon past practice is pulling a rabbit out of a hat. Rather, they believe that past practices are an integral part of the contract between the parties, and as binding upon the parties as their written words.

Defining Past Practice

Arbitrators vary in which factors they feel are essential to the creation of a binding past practice. One arbitrator, in a decision for the River Dell Regional Board of Education (Bergen County), cites six factors needed to determine if a binding past practice exists regarding work assignments:

Clarity:	can it be proven to exist as stated?
Consistency:	random occurrences are not enough
Longevity:	is it a long-standing practice?
Repetition:	once or twice is not enough
Mutuality and Acceptability:	do both parties know of it and see it as a benefit? Or was it unilaterally established for the sole benefit of one party?

The weight the arbitrator will give these different factors depends upon his personal philosophy as well as the facts of the case. Many arbitrators place little importance upon "mutuality;" others view the question of the unilateral or bilateral origin of the practice as the key consideration in determining its binding nature.

How long must a practice go on before it becomes a binding practice? The criteria of longevity and repetition are central to the determination that a past practice exists. It is almost always true that a single occurrence is not enough to establish a past practice. The fact that management may exercise its discretion in establishing the school calendar at 182 days one year does not preclude it from increasing it to 184 days the next year, where the union tried and failed in negotiations to limit the length of the school year. So ruled the arbitrator in a Kingsway Regional Board of Education (Gloucester County) case.

Normally, a practice must occur over a period of years, and must occur consistently, not randomly, to become a binding practice. But in some circumstances, just a few occurrences may be enough to establish the practice. In a case involving the Ridgefield Park Board of Education (Bergen County), the arbitrator found that a binding practice existed of granting the union president time off with pay to attend court in cases involving the union. While the practice had occurred only four times, and only in one year, it was the kind of situation which would not arise very often, and therefore "long-standing" took on a different meaning.

> There is no question, but a single incident or the happening of a solitary circumstance does not a practice create. However, when a situation arises only on occasion, fewer instances or happenings would be required to establish a practice than would be required where the situation often arose. Thus, even a limited number of incidents comparable to the very matter before the Arbitrator could create a past practice, where comparable situations are not likely to occur too often.

Past practices are established through actions that affect employees as a class, or a subgroup of that class. There is no precedential value in actions taken regarding isolated individuals. In the case above, the arbitrator went out of his way to explain that his ruling regarded the president of the teachers' union **in his role as president.** The right to paid leave for court appearances did not apply to court cases involving that teacher as an individual. Nor did it apply to any other representative of the union but the president. It certainly did not set a precedent regarding all teachers in the unit.

In a case involving teacher assignments by the Warren Hill Regional Board of Education (Warren County), the arbitrator stated this principle very succinctly:

> A practice cannot be established by considering what happened to any one teacher. Although grievant volunteered (for 6 teaching periods) in 1974-75, that in itself establishes no practice that she could thereafter be assigned to 6 teaching periods only if she volunteered.

There are a number of cases cited elsewhere in this article that illustrate that past practices can be established for special treatment for identifiable classes of teachers, e.g. department chairman, and English and special education teachers. The relevant point is that the practices were not linked to the individuals holding these positions, but to the positions themselves.

There are two other important elements that are viewed by arbitrators when considering past practice: The "major-minor" test, and the "changing circumstances" test.

If a benefit is of major consequence to employees, and has little or no impact on managerial prerogatives (financial considerations aside), the practice is usually deemed to be binding. In a case involving the Phillipsburg Board of Education (Warren County), the arbitrator ruled that the payment of stipends was a major benefit to class advisors and did not involve a question of managerial freedom to operate the district, and therefore was a binding past practice. If the practice was one of only incidental benefit to employees, but went to the heart of the management of the district, he might have ruled the other way.

The circumstances from which a practice arises are also important. If those circumstances change, the practice may lose its binding nature. In one River Dell Regional case, the arbitrator found that, with smaller staff size, department chairmen did not spend as much time supervising as they once did, and therefore the past practice of assigning them to just two teaching periods daily was no longer binding. In a similar case in the same district, another arbitrator found that circumstances had not changed enough to justify abridging the long-standing past practice of two preparation periods for English teachers per day.

The Use of Past Practice

1. **Where the contract is silent, the arbitrator will have to look to past practice to make a decision on the grievance; with no contract language to guide him, only past practice provides a standard against which he can judge the dispute.**

School boards do not necessarily retain complete discretion in areas that are not directly limited by the words of the written agreement. In a case involving the Verona Board of Education (Essex County), the arbitrator stated:

> Where the contract is silent, a past practice, recognized as such and implemented over a long period of time by the parties, becomes an implied condition of the contract.

As an integral part of the contract, such a past practice becomes enforceable. In this case the arbitrator ruled that the silence of the contract on work loads did not retain to the board the freedom to unilaterally increase the class load of English teachers from four to five periods per day.

In another case on the same point, an arbitrator ruled that the Ridgefield Park Board of Education (Bergen County), could not require teachers to request permission to leave the building during their preparation periods. He concluded that a binding past practice existed permitting teachers to leave the building during preparation (or "professional") periods to conduct personal business. The arbitrator stated that he was "not concerned with the propriety or lack thereof" of the use of professional periods for personal duties. Even if, as the board contended, it was "inane and ludicrous" to contend that trips to a bank or store come within the intent of a professional period, that was the "mutually observed and consistent past practice affecting the activities of teachers. . . and as such binding upon the parties as if written into the Agreement."

Keep in mind that these decisions were rendered based upon clear, long-standing and mutually accepted practices. If, in the latter case, the practice had gone on without the knowledge of the administration, there would likely have been a different result.

2. **Where the contract language is ambiguous**, the arbitrator will look to past practice to give meaning to the written words of the contract. The way in which the parties have applied the contract, even better than their sworn testimony as to "what they really meant," defines for the arbitrator the true agreement.

In an arbitration involving the Point Pleasant Beach Board of Education (Ocean County), the arbitrator had to interpret the meaning of the article entitled "Teaching Hours and Teaching Load." The union argued that, given the definition of "teacher" in the Recognition Clause of the contract, all professional employees, including librarians, nurses, and counselors, could be assigned no more than the equivalent of 30 teaching periods per week. The arbitrator found that the language of that article had to be interpreted in the light of clear and consistent practice.

> All Classroom teachers, the record reveals, are so assigned (to no more than 30 periods per week). However, librarians, nurses, and counselors are not so assigned. **Nor, I note, have they ever been so assigned.** The record reveals that . . . **those individuals have never been assigned on the basis of a thirty (30) teaching period workload.** Instead, their work day has always been governed by the length of the school day to which classroom teachers at the high school were assigned . . . this practice obviously reflects the original intent of the parties as regards such individuals. [Emphasis in the original]

Based on this application of past practice to resolve an ambiguity in contract language, the arbitrator dismissed the grievance.

The use of past practice to give meaning to ambiguous language is essential to the arbitration process. General provisions, sometimes called "fully bargained clauses" or "zipper clauses," that state to the effect that "all prior agreements either oral or written are hereby cancelled and this Agreement constitutes the entire agreement between the parties" do not prevent an arbitrator from looking to past practice in all cases. Where ambiguous language is carried over from one contract to the next, the arbitrator may have to look to practice under the old agreement in order to discover what the parties intended the clause to mean when it was continued into the new contract.

A "fully bargained" clause may prevent the use of past practice where the contract is silent on the matter at hand, especially in the absence of other clauses that limit the board in one way or another, e.g. a clause agreeing to negotiate "proposed new rules or modification on existing rules . . . before they are implemented."

3. **Where the contract language is clear and contrary to the practice,** the standard rule of arbitration is to "go with the contract." This is the inverse of the situation discussed above. Where the language is specific and unambiguous, there is no need for an arbitrator to look beyond the written document.

In a case involving the Hunterdon Board of Education (Hunterdon County), the arbitrator had to rule on whether the board properly refused to grant a certain request for tuition reimbursement. The arbitrator based his decision on a contract clause limiting the number of reimburseable credits to 15 per year. He stated:

> The contract is pellucid as to this. Even assuming arguendo there was evidence of a practice in this regard it cannot be held to be paramount to the contract. The rule has been laid down repeatedly by arbitrators: in a contest between practice and the contract, the contract must prevail . . . the Board of Education did not violate the contract.

In a similar case, the arbitrator ruled against the argument of the Leonia Board of Education (Bergen County), that past practice revealed the intent of the parties. Practice had always been to recognize only graduate credits for movement across the teacher's salary guide. The arbitrator stated that the language in the contract on this topic was clear, unambiguous, and did not lend itself to more than one interpretation. He cited another arbitration award to expand upon his reasoning:

> An arbitrator's function is not to rewrite the parties' contract. His function is limited to finding out what the parties intended under a particular clause. The intent of the parties is to be found in the words which they, themselves, employed to express their intent. When the language used is clear and explicit, the arbitrator is constrained to give effect to the thought expressed by the words used.

Based on the clear language of the contract, the arbitrator ignored past practice and ruled that the board must consider undergraduate credits as fulfilling the requirements for movement across the guide.

A third case in this area is worth mentioning. The Manville Board of Education (Somerset County) was found to have the power to make teacher assignments, including involuntary transfers across grades and between schools, under the authority of a broad management's rights clause. Said the arbitrator:

> The language . . . of the contract is plain, is clear, is simple, is unambiguous and is capable of only one interpretation, when it states that . . ."the Board retains all of its responsibility and authority . . . to direct employees of the school district, and . . . transfer, assign and retain employees in positions within the school district." . . . Under such language the board can make teaching assignments . . . it can transfer or reassign staff . . . it can do exactly as it did.

The arbitrator dismissed evidence alleging the violation of a past practice as immaterial, stating: "Past practice cannot be used as a means to change the explicit clear contract language."

4. **Where a general clause conflicts with a specific one, or with a specific past practice, the more specific prevails.**

Most school board-teacher negotiations eventually consider the inclusion of a clause such as the following:

> Unless otherwise provided in this Agreement, nothing contained herein shall be interpreted and/or applied so as to eliminate, reduce, nor otherwise detract from any terms and conditions of employment existing prior to its effective date.

This general, open-ended clause has been read to guarantee to employees all benefits that exist at the time the contract is signed (see p. 81 of this publication for further information on this topic). In two cases involving the Trenton Board of Education, the arbitrator found that a clause similar to the one above guaranteed to administrators and secretaries the right to consideration for positions in the evening school, despite their failure to qualify under new board regulations on evening school staffing.

In cases involving the Bridgewater-Raritan (Somerset County) and Kingwood (Hunterdon County) Boards of Education, arbitrators ruled that such a past practice (or "savings") clause prohibited encroachment upon employees' preparation time, even when that was the inevitable result of a legitimate managerial decision by the board.

However, such a broad clause doesn't always bind the board's hands. Where an explicit clause provides for one thing, the general past practice clause is overridden. In a case involving the Hackensack Board of Education (Bergen County), the arbitrator ruled that the contract language limiting lunch periods to 40 minutes over-ruled any past practice which might exist, although protected by a past practice clause, by the specificity of its language.

In another case involving the Mt. Laurel Township Board of Education (Burlington County), the arbitrator ruled that the "savings clause" worked to the board's advantage, in that teacher responsibility for after-school supervision without compensation was a condition of employment that continued into the new contract under the protection of that clause.

Generally, however, a board of education should avoid such clauses because of their overbroad and indefinite nature.

General language in the board's favor can be successfully challenged if a specific past practice can be shown to create an exception to the general rule. Red Bank (Monmouth County) and Woodbury (Gloucester County) Boards of Education were both ordered, by different arbitrators, to permit special education teachers to maintain the practice of early dismissal times, despite the existence of clear language establishing a uniform work day for all teachers. The arbitrators reasoned that the teaching conditions of special education teachers were so unique, and the practice was so long-standing and mutually recognized, that the past practice of shorter work hours for these teachers could only be changed through explicit language and direct negotiations.

Summary

The use of past practice by arbitrators cannot be totally eliminated. In certain situations it provides the only way to settle the dispute.

However, dependence upon past practice to protect one's rights is risky, because the determination that something is a binding past practice is always a subjective judgement.

It is generally better, therefore, for a school board to seek to limit the power of past practice in settling grievances. The time to make this attempt is in negotiations.

The following steps can be taken to decrease dependence upon past practice in administering the labor agreement:

1. Include a strong management's rights clause, such as the one on page 17 of this publication. Be sure to include a provision giving the board the right to make reasonable work rules or to implement new board policy.
2. Delete the "past practice" or "savings" clause if it is in your contract. Avoid agreeing to such a clause if you have not already done so.
3. Avoid ambiguous contract language whenever possible. Try to make specific what rights and obligations each party enjoys.
4. Examine your contract for language which contradicts actual practice. If the board would prefer to see the language enforced, all that is needed is fair notice to employees that from that time forward (never retroactively) the letter of the contract is to be followed. If the actual practice is preferable, seek the deletion of the language in the next negotiations.

Negotiation Committees and the Board

As with many other of its responsibilities, the local school board most often negotiates through a committee. Board members, administrators, board attorneys and professional negotiators, either individually or as teams perform the arduous task of narrowing differences and seeking compromise on the wages, hours and working conditions of school employees.

The composition of your committee is largely determined by local factors. You should use what meets your need. (See **What Every School Board Member Should Know About Collective Negotiations**, pp. 6-15)

There are some points which should be highlighted:

1. **You can use anyone you want to in negotiations.** The PERC law guarantees

that both employers and unions can freely select their own negotiators. Attempting to force the other side not to use an individual as a member of the team is an unfair practice.

2. **Individual board members or administrators should not deal with contract negotiations problems unless authorized to do so by the board or its committee.** A favorite tactic of unions during negotiations is to try to approach individual board members and administrators about bargaining problems. Sometimes, the union leader will call a non-team member, assuring him or her that the union recognizes them to be "responsible" and "not like the others." If the board member is drawn into a full discussion of negotiations, a pattern of such conduct will be established. It is not wise to argue the board's position with the union leader. You may use arguments never before raised, you might find yourself contradicting your team and, worst of all, you may end up making a commitment which you cannot carry out. **Unless you are directed by the board to speak on its behalf, you should inform anyone who attempts to deal directly with you that they are violating the PERC law by bypassing your representatives.** This also applies to negotiating team members who, in a given instance, are not specifically authorized to speak for the board.

3. **Under certain circumstances, your negotiating committee can bind the entire board to a contract.** Over two years ago, PERC held that a board may be bound by the tentative agreement reached by its representatives. Part of that decision read:

> *We can conceive of no reason why the parties are not bound by the agreement reached by their representatives, and should not therefore take the remaining step required by the Act, that is, execute a formal writing representing the agreed-upon salary guide.*[1]

In this decision, the board had authorized a team to act on its behalf. That team reached a memorandum of agreement, which the board unanimously rejected. PERC said that a board of education was like a corporation's board of directors. It has long been held in the private sector that duly authorized "agents" of a party can legally bind that party. The board argued that, as a governmental entity, it can only take actions in public by majority vote. PERC rejected that argument saying that the PERC law clearly allows the employer to act through such "agents."[2]

In another case, a PERC Hearing Examiner, noting that there was no written limitation on the authority of the board's negotiating committee to reach a final agreement, held the board bound to that tentative agreement. Likewise, a union negotiating team, unless explicit notice is given to the board to the contrary, can bind the employee organization.

Can the authority of the board's team be limited? Yes. It has long been held that a party may limit the extent of authority of its agents. **The best way to do so is to send a letter to the union prior to the first negotiating session.**

Here is a sample letter which might be sent to the union prior to negotiations:

> The Board of Education has selected the following individuals to be members of the Negotiating Committee of the Board:
> (insert names)____________________________________
>
> The Board hereby authorizes this Committee to enter into discussions with (enter name of the union) concerning a successor contract for the 1978-79 school year for the unit which includes all (list the job classifications in the contract).
>
> The Negotiating Committee is directed to act in good faith on all matters relating to a successor contract. The Board of Education reserves to itself the final and ultimate authority concerning any agreement to a successor contract.
>
> The Board's position in this matter is based upon its understanding of its public obligation and its obligations under Chapter 123, Public Laws of 1974.

What should the board do then? The board's committee must have the confidence of the entire board. The committee must only make movement within the guidelines set down by the board. The committee should regularly report back to the board in closed session on the progress of negotiations. The board should not wait until the conclusion of negotiations to raise questions on tentative agreements. Board members who are on the team should never place themselves in the position of publicly voting no on the agreement. Budget defeats and State aid changes should never force a board to revise a negotiating committee's tentative agreement. This is so because no board should ever reach an agreement on salary or fringe benefits if it doesn't know where the money is coming from. That is not only good negotiating strategy, it would seem to be responsible government as well.

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[1] Bergenfield Board of Education and Bergenfield Education Association. PERC No. 90.

[2] This issue may very well be argued in other cases before the courts of the State.

Is Everything You Do Grievable?

PERC has ruled that language in Chapter 123 requires that public employers negotiate grievance procedures by means of which employees or their representatives may appeal the interpretation, application or violation of policies, agreements and administrative decisions affecting them.

This decision does not just say that you must negotiate a grievance procedure to cover contractual violations. It says that certain language in the law, backed by PERC's view of a constitutional clause, guarantees that all employees be able to, in some way, grieve any employer action "affecting them."

What does "affecting them" mean? We do not know the full definition of the phrase. If PERC's decision withstands a court test, many more decisions may be required in order to provide us with that meaning.

To some boards who are unaware of the alternatives, there will be much confusion. Other boards will be unaffected by this decision because of the nature of their school districts.

Boards which refuse to negotiate grievance procedures as called for in the West Windsor decision, run the risk of having unfair practice charges filed against them. The Commission will undoubtedly uphold the West Windsor decision and eventually find offending boards guilty of an unfair practice. Of course, if the courts reverse West Windsor, no violation can be found.

Boards, in our view, do not violate the law if they refuse to process grievances through present procedures on matters not currently covered by the grievance definition in the contract. The West Windsor case requires boards to negotiate grievance procedures covering "administrative decisions and policies affecting them (employees)." It does not require that the current procedures be used for items which cannot be grieved under your agreement.

This point cannot be overemphasized. In September and October, supervisors, superintendents and boards will be informed by employee organizations that West Windsor requires that anything you do as a board must be grievable through the current procedure, up to and including binding arbitration. That is not true.

At this point, we repeat that most critical of holdings: your obligation to negotiate in good faith does not require unacceptable compromises on your part. If the proposed procedure or procedures offered by the union fail to meet your needs, you may hold fast to your position.

Unlike other terms and conditions of employment, however, you must successfully negotiate these procedures (if West Windsor remains good law). If the union seeks dental insurance, there is no need to finally agree on a dental insurance clause. This is true with other terms and conditions. It is not true with grievance procedures under Chapter 123. The final agreement will be on mutually acceptable terms and may be on the terms you propose but there must be a substantive agreement.

If you do reach agreement on a procedure whereby "administrative decisions and policies" may be grieved, you may seek to append a sentence similar to the following:

> Should the obligation to include the above procedure be reversed
> by court decision, said provision is null and void.

Such a sentence is a recognition that you are willing to abide by the law but that such an agreement to include the procedure in the contract would not have been reached absent West Windsor.

The significant aspect of the written decision which we mentioned and which you should consider involves the concept of "dual procedures." Even PERC notes the real possibility that boards and unions under West Windsor will negotiate two separate and distinct procedures which are then reduced to writing in the contract.

The most common situation would be that: 1) all terms of the contract itself are grievable under the current procedure (this would include arbitration if already agreed upon); and 2) "administrative decisions and policies" would proceed through another procedure, similar in some districts to current complaint procedures in board policy or contract. There may even be targeting of various types of grievances. For example it is unlikely that the board or union would desire board policy to be grievable beginning at the building level. Policy, set by the board, may only be changed by the board. Supervisory handling of grievances on policy would be time-consuming and futile. Perhaps grievances in this area would start with and end with the board.

Of course, demands will be made that everything be arbitrable. Almost all boards, even those who have agreed to contractual grievance arbitration, will see the folly in submitting matters, many of which do not touch upon employee salaries, hours or working conditions, to arbitration.

Some boards may even use the decision to separate "administrative decisions and policies" from their current grievance procedures which also cover contractual violations.

In any event, the method which you employ to respond to the decision is critical. If you have difficulties with certain aspects of the decision, please call your attorney, professional negotiator, field service representative or the Labor Relations Department.

The Scope of Bargaining

The past year continued the debate over what it is that school boards must negotiate. One of the first questions that must be asked is: "are we required to negotiate this topic?"

The standard union response is that everything is negotiable. What they may really mean is that everything is subject to correction if there is a serious problem. Successful personnel management involves alterations in ways of doing things in order to maintain a productive staff. Saying that an item is "not a required bargaining subject" is not identical to saying that a personnel problem doesn't exist.

Many boards and administrators have attacked the problems which generate contract demands and have avoided prolonged dispute. Some never seek out the real reason for a demand and spend a great deal of energy in raising legal arguments rather then resolving manageable conflicts. Other boards are faced with demands that have no justification, that are "throw-ins" or that interest only one or a few unit members. Those demands may not lend themselves to a problem-solving approach and may be best ignored or denied.

And then there are the real confrontations over management rights versus employee benefits. That is where the scope of bargaining problem exists.

Some definitions:

A required subject for collective negotiations -

One which must be negotiated if either party desires to do so. A refusal to negotiate a required subject is normally an unfair practice. Remember the definition of good faith bargaining which appears earlier in this book. The obligation to negotiate concerning a required subject does not force you to make any concession on that point.

A permissive subject for collective negotiations -

One which may be negotiated only if both parties wish to do so. The types of matters which fall into this area are curriculum, budget, the decision to hire, promote and transfer. If the board does not wish to negotiate a permissive subject, it need not do so. The insistence by the union to the point of impasse on a permissive subject would be an unfair practice.[1] According to PERC, if the parties do agree to a permissive subject in the contract, alleged violations of that provision can be grieved and arbitrated (if an arbitration agreement exists).

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[1] If a panel of the Appellate Division takes a position opposite PERC, the court position is the one listed here.

The following items have been held to be required by PERC or the courts under Chapter 123 (remember, you must negotiate concerning these if demanded by the union; you do not have to concede unless you desire to do so)[1]:

Salary
Sick Leave
Changes in hours of employment
Impact of affirmative action plans
Impact of decisions concerning the calendar
Impact of class size
Procedures for selection of department chairmen (not qualifications!)
Fair dismissal procedures
Evaluation procedures
Impact of assignment of duty
Personal leave
Holiday policy
Vacation policy
Decrease in the length of the work year
Impact of corridor supervision assignment
Duty free lunch period
Length of the workday
Impact of playground, bus, lunch and recess supervision assignment
Custodial functions (collection of money, for example)
Posting of vacancies
Procedures for selection of summer employees
Issues relating to physical facilities for employees or their safety
Procedures to be used in promotion (not qualifications!)
Length of a collectively negotiated agreement
Tuition reimbursement
Disciplinary procedures
Retroactive payment for accumulated sick leave
Job security (not necessarily "tenure" under Title 18A)

The following items have been held to be permissive by PERC or the courts under Chapter 123 (remember, you do not have to negotiate about these unless you desire to do so; even if you do agree to negotiate, you have no obligation to make a concession)[1]:

Budget formulation
Expansion or reduction of facilities
Affirmative action plans
Productivity studies
Academic calendar
Number of employees to employ
Class size
Qualifications for promotion
Decision to assign cafeteria, corridor, playground, bus supervision
Qualifications for employment
Criteria to be utilized in selecting summer school employees
Facilities relating to the educational process
Curriculum
Absentee and tardiness policies, but disciplinary aspects are required subjects
Involuntary transfer
Minimum minutes of contact time for students
Number of unit positions

The following items have been held to be illegal by PERC or the courts under Chapter 123 (remember, any agreement on an illegal subject is invalid and unenforceable)[1]:

Maintenance of membership clauses which forbid the employee from halting dues deductions during the term of the contract
Procedures for reduction in force
Withholding of increments

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[1] If a panel of the Appellate Division takes a position opposite PERC, the court position is the one listed here.

Can You Ever Change Terms and Conditions of Employment?

We have now explored the definition of good faith bargaining and the emerging scope of negotiations. The next question is: When have we fulfilled our obligation to negotiate in good faith?[1]

1. Terms and Conditions of Employment

The PERC Law obliges employers to negotiate in good faith concerning "terms and conditions of employment." Terms and conditions of employment traditionally has meant wages, hours, fringe benefits. PERC has also defined it to include those required subjects in the preceding article.

2. Sources of Terms and Conditions of Employment

There are several sources for terms and conditions of employment. The source we most often think of is the contract itself. However, long-standing practice in a district and board policies can also establish terms and conditions of employment. State laws and court decisions (such as the **Donaldson** decision) create terms and conditions.

3. May You Ever Change Terms and Conditions?

If PERC follows standard private sector labor law, an employer will be prohibited, except in certain circumstances, from changing any term and condition of employment. The exceptions would be: 1) where State law provides a certain course of action which may not be deviated from; 2) where the union has "waived" its rights to negotiate; and, 3) where the board has negotiated with the union in good faith and no agreement can be reached (sometimes referred to as a "genuine impasse.")

A. STATE LAWS

If the State Legislature enacts a statute which requires a term and condition of employment to be changed, the board must make that change. They are relieved from the obligation of negotiating.

B. UNION "WAIVER"

The board may retain the right to act without negotiating in a number of circumstances:

I. Where the union has specifically given up its rights in a written agreement.[2]

For example, the union may agree to this clause: "During the term of this agreement, the Board may make changes in the health insurance coverage of employees consistent with the economic needs of the district." This language specifically frees the board to make non-negotiated changes in health insurance.

II. Where the union has failed to achieve certain gains in negotiating.

Often, the union will bring specific demands to the bargaining table which they will abandon during the course of negotiations. For example, the union might seek a clause requiring layoff of non-tenured teachers in seniority order. They drop the demand.

What happens months later when the board is forced to lay off teachers and the union again seeks a seniority provision? We would argue that, for the term of the contract, the union has knowingly waived its rights in that area.[3]

III. Where the union clearly agrees that the board can make a change in terms and conditions.

In a 1977 PERC decision it was held that a State of New Jersey union had agreed to allow the State to change meal and mileage reimbursements when it set a cut-off date for negotiations on these two items. The union went to mediation and factfinding on many other issues but separated these from normal impasse procedures.

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[1] This discussion is based on PERC cases and an analysis of private sector practice. It can be altered by State court decisions. The NJSBA will continue to inform boards of changes in interpretation of our bargaining law.

[2] This section is based entirely upon private sector labor law. If, during the term of your contract, you are presented with demands on any issue which is not covered in the contract, think about each of the following circumstances.

[3] Of course, the union may present demands on these topics at the next contract negotiations round.

Many contracts contain management rights clauses such as that printed in the **Board Proposals** article later in this book. The intention of the clause is to retain for the board the ability to manage the school system in any way only limited by the **express terms** of the contract. It has been called a reverse past practice clause.

It can be argued that such a clause is again a knowing waiver by the union. Decisions in the private sector do not generally support this position.

C. GENUINE IMPASSE

In the private sector, an employer may unilaterally impose terms and conditions of employment when a genuine impasse is reached. In the private sector, this occurs when it is obvious that there is little or no likelihood of agreement between the employer and union in the foreseeable future.

PERC has held that, under some circumstances, an employer may impose a change in terms and conditions of employment. (See **Negotiations News & School Law Reporter**, Vol. 3, No. 5, pp. 3-5.) This may be legal after good faith negotiations have occurred and normally after mediation and factfinding have concluded. Any board which is attempting to determine if a "genuine impasse" has been reached in negotiations should contact the board attorney, professional negotiator and the Labor Relations Department.

Regulating the Negotiations Process

You will recall that for the last two rounds of negotiations, PERC required the parties to negotiate under a timetable by which the commencement of negotiations, mediation and factfinding was regulated. This year that artificial timetable has been dropped in favor of permitting a party or both parties to petition PERC for neutral assistance at a point in the negotiations process when such assistance is needed. The only remnant of the timetable is the subtle requirement to commence negotiations on October 4, 1977 which is 120 days prior to the "required budget submission date" (February 1, 1978) established by PERC for school boards. However, you may jointly agree with the union representatives in your district to begin negotiations at any time before or after the commencement date. You should give serious consideration to tailoring the length of the negotiations process to suit the individual bargaining relationships in your district. Make use of the flexibility available.

Impasse Procedures

The PERC Law (Chapter 123) provides a mandatory impasse procedure which is used in the event an agreement over the terms of a successor contract has not been reached. Since public employees within the State of New Jersey do not have the right to strike, the legislature determined that a suitable alternative was needed for the resolution of any impasse which might occur during the process of collective negotiations.

In almost every state where public sector collective negotiations has been sanctioned by law, mediation and some form of factfinding is used to assist the parties in reaching settlements. Chapter 123 provides for mediation (where the mediator tries to persuade the parties); and, factfinding (where the parties try to persuade the factfinder). *

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* Police/firemen are the only employees in New Jersey which have a different impasse procedure. After factfinding, if there is no resolution of the issue, the dispute is submitted to an arbitrator(s) for a binding determination.

Mediation:

Mediation is the intercession of a third party neutral who attempts to help the parties reach agreement after they have come to an impasse in their negotiations.

The mediator is an advocate of the public interest who represents PERC. A MEDIATOR HAS NO AUTHORITY OR POWER TO MAKE RECOMMENDATIONS WHICH ARE BINDING ON EITHER PARTY. His function and role as a neutral government representative at the negotiating table is to assist and guide both parties toward arriving at a mutually acceptable compromise. He is not concerned with imposing upon the parties his own personal value judgements as to what he believes would be the most equitable agreement. It is the interests of the parties which is at stake and it is his role to encourage a settlement. The mediator is not concerned with fairness. His goal is simply to assist the parties to reach an agreement which is ACCEPTABLE to them.

If an agreement does not seem to be near during the process of mediation, the mediator may recommend to PERC that factfinding would be useful in resolving the continuing impasse. The recommendation will be in the form of a confidential mediator's report and the report will be one of the criteria used by PERC in considering whether or not the factfinding procedure should be initiated. PERC pays the mediator for services rendered.

Factfinding:

Factfinding is a process requiring both parties to gather any and all relevant objective information in order to present persuasive argument to a third party neutral who would then issue a written report and recommendations for settlement. Although the recommendations are non-binding, their release is geared toward arousing enough public opinion and news media comment to put substantial pressure upon both parties to reach an agreement within the guidelines established by the factfinder. Consistent with the view that the public, as taxpayers, has a special right to be cognizant of all the factors involved in public employee disputes and because no other adequate alternative has yet been devised, factfinding has remained alive as a governmental dispute resolution tool for public education negotiations disputes. In the past few years, the impact of factfinding has been dramatically reduced mainly because the process has become somewhat routine and addictive and public opinion has not, in most cases, rallied to the point of inducing the parties to settle. This is not to say that the process is not useful. It can be an effective method of moving parties to compromise without either side losing face if it is used to facilitate rather than replace collective negotiations.

In most cases, the initial functions of the factfinder will be analogous to those of a mediator. He will pursue a mediation role in an effort to effect a voluntary settlement without "donning his robes" as factfinder, unless of course one or both parties object to any additional mediation and insist that factfinding commence. If the latter situation occurs or the factfinder is unsuccessful in resolving the dispute through mediation, he then moves into a more formal role with the authority to make written findings of fact and to recommend the terms of a settlement. A FACTFINDER'S REPORT AND RECOMMENDATIONS ARE ADVISORY AND NON-BINDING ON BOTH PARTIES. The factfinder's recommendations represent what he perceives, via the outcome of the hearings he conducts, as a predictable expectation of where the parties will reach agreement. To a factfinder, the equity of a party's position will take a back seat in favor of emphasizing recommendations which in the factfinder's judgment will be the most acceptable and receptive to both disputing parties. Factfinding is not necessarily the finding of fact as much as it is the finding of acceptability. The "facts" may not warrant a specific recommendation but the factfinder may understand, through his time with the parties and his experience, that the recommendation might well be accepted. Of course, factfinders can and do risk ignoring critical facts. This leads to unacceptable recommendations.

Chapter 123 does not contain criteria or guidelines upon which the factfinder must base his recommendation. Absent specific statutory criteria, factfinders have formulated their own criteria and tailored the application of the criteria to fit the negotiating relationship of the parties in dispute. In any event it is significant that whatever criteria is used, the parties be aware of it and present their case utilizing the same guideline the factfinder does in making his recommendation. This would involve consideration of any factors which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment.

If the impasse has not been resolved prior to or during the factfinding hearing, the factfinder will then issue his findings of fact and written non-binding recommendations for settlement as soon as possible after he has declared the hearing closed.

The recommendations will be submitted to the parties privately as well as to PERC. The parties must then meet within a period of five days in order that statements of position may be exchanged and an opportunity provided to reach agreement on the basis of the recommendations. EITHER PARTY MAY ACCEPT, REJECT OR MODIFY, EITHER IN FULL OR IN PART, THE RECOMMENDATIONS OF THE FACTFINDER.

In the event the impasse continues, PERC then has the authority to take whatever steps are deemed expedient to effect a settlement. The Commission may maintain a continuing role but in no case concerning issues which remain in dispute after factfinding does PERC have any authority or power to make recommendations or awards which are substantively binding on both parties. Negotiations are, therefore, considered to be "open-ended," i.e., there is no compulsory finality step in the impasse procedure for negotiating disputes involving public education.

The cost for the services of the factfinder are paid for by the parties, not PERC.

The Labor Relations Department maintains an information file on each member of PERC's panel of factfinders. In addition the staff itself has an intimate knowledge of the "track-record" of most of the neutrals on the panel. If you need assistance in selecting a factfinder from a list submitted by PERC or in the preparation of your factfinding presentation, don't hesitate to call your local Field Service Representative or the Labor Relations Department directly.

Contract Administration: Monitoring the Collective Bargaining Agreement

Now that the contract has been ratified by the board of education and the union membership, you can get back to the business of deliberating and determining educational policy. Right? WRONG!

After the contract has been consummated, the board of education's responsibility is to then translate the terms of the new agreement to its administrative staff who will be charged with the responsibility of administering the contract. The policy makers must inform the policy implementors of the flexibility and restraints permitted and prohibited by the agreement. Contract administration is one-half of the negotiations process and unfortunately it has been the most neglected. You can hire the most sophisticated management negotiator in the world to obtain the best agreement possible, but if your administrative staff is either unprepared or uninformed about the intricacies of administering a contract, the effort put into negotiations will be futile.

Likewise, it is incumbent upon the administrative staff to point out flaws, weaknesses and untenable contractual constraints to the board of education prior to and during the preparation for negotiations. If an administrator is spending 90% of his time administering a labor contract rather than educational policy, there is a serious problem which needs to be addressed by the board in its next round of negotiations. It is up to the administrator to provide the board with the awareness that a problem does indeed exist. The administrative staff, as a result of its unique familiarity with the contract, should provide and be tapped for as much input in negotiations as possible. When you consider that most union representatives are walking authorities on the terms of the agreement and know all the techniques available to extract every last ounce of leverage from the contract, it becomes fairly clear that survival means evening up the odds. When hanging is imminent, it tends to sharpen one's perspective!

How can you tell if your administrative staff is initially prepared to adequately deal with the rigors of contract administration? Have each staff member take the following quiz and the results will yield your answer.

- Have you ever read the PERC Law?
- Have you ever read the most recent teachers' contract in its entirety? What about the support staff contracts? Do you understand them?
- If you have not read the entire teachers' contract, have you at least read the grievance procedure?
- Have you ever taken a labor relations course during your studies to attain your supervisory certificate?
  - in negotiations
  - in contract administration
- Have you read every arbitration award rendered in the school district within the past five years? Do you understand them?

The Tools of Contract Administration

At the very least, every supervisor should understand:

1) the effect of his/her duties in relation to the collective bargaining contract.

An administrator is a proponent and protector of management's rights and as such should attach a literal rather than liberal meaning to contractual clauses which may be contested. Don't be overly cautious for fear of violating the contract. Instead become as aware as possible of the contractual limitations. If you know the areas you're limited in, you've also more clearly established your discretionary areas.

2) how to handle complaints and grievances.

"All grievances are complaints but not all complaints are grievances," as the saying goes. Your attitude about the agreement and behavior in administering the contract will greatly improve the quality of your expertise to decipher and diplomatically eliminate minor complaints which could ripen into major problems. There is no magic formula for obtaining positive results in this area but listening attentively, displaying patience and being consistent are the main ingredients of successful contract administration. Remember, in order to establish a practice beneficial to the union membership, the union will target the administrator who administers the contract in the weakest and most liberal fashion.

3) the grievance procedure.

The grievance procedure is the main tool in the administrator's survival kit. It should almost be memorized, both in substance and applicability.

Some Tips On Contract Administration

The above is by no means a complete review of the responsibilities of a supervisor charged with contract maintenance and administration. It is our intention to bring out the major components of a very complex responsibility which board members and administrators alike should come to grips with or at least begin to improve upon. The longer our bargaining law exists, the more important it is to be totally conversant with the entire contract administration area. One way of achieving this goal is to develop a contract administration guide for all school administrators which should contain the following: *

- The PERC Law and Rules and Regulations
- A copy of every collective bargaining contract in the district. The contracts should be analyzed in plain language by the board's chief negotiator (or someone on the negotiating team who is able to adequately analyze). The analysis should emphasize to each level of management their respective obligations/duties as a result of the agreement. Highlight and prioritize those areas in the contract which involve direct decision making by each level of the administration.
- Copies of all forms used in order to meet the obligations of the agreement -- eg., -- grievance form
  -- application forms for personal leave, etc.
- Copies of every arbitration award rendered in the district with an explanation as to their ramifications on contract administration.
- Any other local documents which might be an aid to all district administrators for implementing the contract.

Additionally, establish a district-wide forum to regularly discuss problems associated with the contract and have administrators attend seminars and workshops in negotiations and contract administration to keep abreast of what is happening in New Jersey with respect to labor relations.

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* NJSBA is currently writing a contract administration guide book for school administrators. It will be available after the first of the year.

Board Proposals

There is a myth that there can be no improvement in a contract from the point of view of a board of education. We would be the last ones to claim that the board, saddled with impossible contract language, can easily or quickly modify that language. A contract clause, after all, has a certain inertia. But some boards have been able, with skill at the bargaining table, to convince unions that language modification or deletion is a fair price to pay for the board's salary, fringe benefits and language concessions.

Board proposals may not be for every district. There are districts that might benefit from one type of proposal and not from another. The success or failure of the board proposal is closely related to the board's bargaining ability, the state of the current agreement and the relationship which the board has with the unions representing their employees.

The board proposal may be met with expressions of outrage. Sometimes it is met with threats that unfair practice charges may be filed against the board. In the first part of this book, we discussed good faith bargaining. One point should be highlighted here: *the obligation of the board to fairly consider the proposal of the union is no greater than the union's obligation to fairly consider the board's proposals.*

Certain points should be kept in mind when using board demands. First, it is generally counterproductive to make as many demands as the union. Any attempt to "gut" the contract (i.e. remove substantial employee benefits) will be met by union hostility and may very well endanger negotiations. Pick a few points you wish to stress: contract provisions which have created difficulties for your administrators and contract language which has resulted in lost arbitration awards. Second, you will not win every demand the first time out. If you are serious about your demands, if you explain your position to the union, and, most importantly, if you tie your concessions to union concessions on your own demands, you will make some progress. You will also set the groundwork for future negotiations.

What follow are examples of board proposals. Change them to meet your needs; add new ones to reflect desired changes in your current agreement.[1] Above all, don't let another year go by without investigating the possibility of whether board proposals can make your contracts more livable.

The following clauses might be considered by the board for submission as proposals:

1. **Management Rights Clause** - The board reserves to itself sole jurisdiction and authority over matters of policy and retains the right, subject only to the limitations imposed by the language of this agreement, in accordance with applicable laws and regulations (a) to direct employees of the school district; (b) to hire, promote, transfer, assign, and retain employees in positions in the school district, and to suspend, demote, discharge, or take other disciplinary action against employees; (c) to relieve employees from duty because of lack of work or for other legitimate reasons; (d) to maintain efficiency of the school district operations entrusted to them; (e) to determine the methods, means and personnel by which such operations are to be conducted; and (f) to establish reasonable work rules; and (g) to take whatever actions may be necessary to carry out the mission of the school district in situations of emergency.

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[1] Additional proposals and sample contract language are available from your local Field Service Representatives.

2. **Fully Bargained Provision** - This Agreement represents and incorporates the complete and final understanding and settlement by the parties of all bargainable issues which were or could have been the subject of negotiations. During the term of this Agreement, neither party will be required to negotiate with respect to any such matter, whether or not covered by this Agreement, and whether or not within the knowledge or contemplation of either or both of the parties at the time they negotiated or signed this Agreement. (This is the exact opposite of "past practice" or "savings clause.")

Caps and Negotiations

The Budget Cap Problems

Budget caps have direct and obvious effects upon the progress of negotiations. The average cap on net current expense budget declined from about 8.6% for school year 1976-1977 to 7.2% for school year 1977-1978. Present estimates place the 1978-1979 cap at about 6.1% on average.

Since salary increments for our largest group of employees, teachers, range from 2% to over 4%, the problem for high spending districts is clear. Some districts which have traditionally expended large amounts per pupil may well be close to exceeding next year's cap just with the current increment guide in the contract. And teacher increments are only one of the various more-or-less fixed cost increases to the district.

The "Political" Cap

For school districts that will have a cap in excess of 5% in 1978-1979, there may very well exist a "political" cap. Municipalities are limited to a flat 5% increase under their own cap law. Districts which experience budget defeats (in the range of 55% to 60% of all districts in the past two years) and appeal to municipal governing bodies will face councils working under the 5% cap with little ability to seek waivers for their own operations. In a meeting with Mercer County officials, the person ultimately responsible for municipal and county cap waivers made very clear that the restrictions would remain in force.

The district with an 8% cap and a defeated budget may find sympathy in short supply even if they seek a fund restoration by the municipality to allow a 6.5% spending increase. While some municipalities may be as supportive of educational spending next year, it is quite possible that at least a few will not be.

Compensation Is More Than Salary

Don't be misled by the salary increase game played by union negotiators. When you negotiate a labor contract, you will probably deal with a range of fringe benefits which cost the school district money. You will agree, in most cases, to provide not only additional dollars in incremental movement but additional dollars to increase the salary level at each increment. You may agree to benefits such as additional sick leave, holidays or sabbatical leaves which have costs to the district. In the case of additional sick leave, for example, you may also be required to pay out increased substitute teacher compensation.

If you agree to items which, on their face, have no direct cost to the district, costs may actually occur. For example, any new clause which is subjected to the grievance procedure and arbitration may require expenditures by the Board.

In addition, current benefits if fully used by all employees can increase the compensation you provide. For example, perhaps all teachers are eligible for tuition reimbursement up to twelve credits a year. Currently, only 50% of teachers receive reimbursement and most of those take less than 12 credits. What if there is an upswing in either the number of teachers participating or the number of credits taken? District costs for compensation rise.

In any budgetary situation, the failure to deal with complete compensation rather than salary alone can cause difficulties. In a tight cap situation, the results can be quite damaging.

Even if the board is successful in holding employee salary increases (including increment, of course) to a correct proportion of the entire amount of new money available, it may still face serious cap pressures even if all non-compensation spending is controlled equally. Why? Because certain employee compensation costs have and will rise at a much faster rate than either the cap percentage or the cost of living. One vivid example is the cost of health insurance. Premium increases have far outstripped the cost of living in recent years and will continue to do so in the future.

Concentrating solely on salary in negotiations will almost certainly distort the budgetary process of the school district.

The Use of Surpluses

There will be great pressure for boards to fund compensation out of the unappropriated free balance or "surplus" account. Such expenditures do not fall under the cap. The district spending $1,000,000 in its net current expense budget in 1977-1978 with a 5% cap, may raise and expend another $50,000 from State aid and local taxes in 1978-1979. It may also (if it has the surplus) expend any amount of money it desires from its surplus. If it does so for non-recurring line items (and it has not endangered itself by leaving an insufficient free balance), few problems should arise.

The district that funds recurring line items, such as compensation increases, from the surplus will create two major problems for 1979-1980 and beyond. First, the district that uses surplus to fund 1978-1979 recurring line items will not have that same amount of money available in 1979-1980 unless there is currently a large surplus which can be spread over a number of years. Use of the surplus for items such as compensation increases creates an illusion of available funds for ongoing programs or personnel. Second, the psychological burden of the cap will fall fully in 1979-1980 rather than over two years. You will have funded a compensation increase for 1978-1979 which is higher than you would otherwise be able to do because you've used your surplus. The compensation increase will be artificially inflated given your cap situation. In 1979-1980, with no surplus to fall back on, you will be expected by the union to deliver compensation increases in the same percentage amounts as previously. This will be particularly critical if the budget cap for the district drops further for 1979-1980. The fall-off in possible settlement percentages will be even steeper.

The State of Educational Economics

The cap system introduces one further factor into school finance which increases, the liklihood that compensation settlements will differ from those agreed upon in the past. Current levels of financing and budget caps will allow many school districts to increase budgets less than in the past. School districts may not be able to add compensation which equals general cost of living increases without program and staff reduction.

Districts which are tied to cost of living increases as the basis or part of the basis for salary settlement place their complete faith in the rate of inflation. If the cost of living runs at or below the district's cap, no problem may arise. If inflation runs ahead of the cap, the district will have no alternative but to cut programs and lay off employees. If inflation reaches the 1972 level of 12% and caps remain on districts, the effects on boards with cost of living tie-ins will be disastrous.

A recent report by the Public Employment Relations Board highlights the difference between directly negotiated agreements and schedules tied to the consumer price index (CPI). 1976-1977 agreements reached directly contained 2.8% increases on average. Multi-year contracts tied to the CPI averaged 5.3%. (**Bulletin for Mediators and Factfinders**, PERB, N.Y., November 1976).

Multi-Year Contracts

The early settlement of negotiated agreements can be, in certain circumstances, highly beneficial to the district. Multi-year agreements provide the opportunity to put most negotiations problems to rest.

The most common approach to multi-year contracts is to provide greater increases in compensation in the second and/or third year of the agreement than in the first. In some cases, the district anticipates increased revenues in those years. In other cases, boards might simply be postponing tough prioritizing in the budget.

Budget caps will decrease on average from 1977-1978 to 1978-1979. They may very well decrease or remain constant in coming years. Multi-year contracts that keep the district within the cap in the 1978-1979 school year but push it beyond those caps in the succeeding years will require diversion of funds from other budgetary areas.

Boards should be particularly wary of assuming that caps will "go away" in two or three years, thereby making larger settlements permissible.

Earlier we cited a recent PERB study on 1976-1977 agreements. Directly-reached salary agreements averaged 2.8%. Multi-year contracts averaged 5.8%.

All Districts Are Not Comparable

Many school districts compare their level of employee compensation to surrounding districts. Others look at districts of comparable size, grade pattern or enrollment. Such comparisons are natural and useful to a point. They provide some information in the formulation of a board offer and ultimate settlement.

Reliance on such comparisons, even if employed in the past, can lead to serious negotiating errors. Neighboring districts can be widely divergent in their budget cap limits. Those districts may have the ability to pay an 8% salary increase. Your district might face serious program and staff reductions as a result of such a settlement.

Pressures will grow on tight capped districts to settle in excess of the cap because other districts, with a more flexible cap, have achieved a contract. The pressure is unlikely to be as great, however, as that experienced when the district must make large-scale program and staff reductions or attempts to avoid its contractual commitment. Boards must share their views on negotiations more than ever because of this sliding cap system.

Some districts have agreed to tie their salary settlement to settlements of other districts. If those districts are very similar in educational program and cap percentages and those districts negotiate within the cap, such averages may assist the district to reach a salary settlement with a minimum of bargaining hassle. The combination of these factors though makes it much more likely that the district will find itself saddled with an intolerable burdensome salary agreement. Placing your complete faith on the negotiating abilities of other boards can seriously undermine your budgetary integrity.

The Commissioner and the Caps

On October 28, 1976, Commissioner Burke announced that salary settlements arrived at through negotiations would not be considered a legitimate reason for raising of budget spending caps. He also stated that negotiated agreements would not be considered a legitimate reason for the abrogation of the T & E process.

Little assistance, therefore, can be expected in the form of waivers in cases in which the board's percentage of compensation increase is larger than the district's cap percentage. In addition, it is conceivable that even in situations in which the compensation increase is below the cap percentage, waivers to carry out T & E obligations will be infrequently granted.

Alternatives to Lowering Compensation Settlements

Of course, boards may choose to reduce spending in other ways. Enrollment decreases and caps will combine to force school closings. Boards may decide not to fill vacant staff positions. There are savings in other areas of the budget. For the district with minor cap problems these alternatives could allow it to accede to compensation demands without laying off employees.

In tight cap circumstances there is a far different problem. In most school districts, compensation for staff reaches or exceeds 80% of the operating budget. We are an intensely person-based enterprise. Layoffs will be a natural result of higher than cap settlements. No matter how much we are committed to maintaining staff levels and delivering compensation increases, we face the same economic pressures as private industry and other governmental units.

Contract Language and Caps

As caps intensify the difficulty of granting compensation increases, union representatives will turn to other areas of the contract for visible gain. The continued warnings concerning contract language should still be heeded. Waiving substantive board prerogatives, especially in the areas of evaluation, renewal, dismissal and layoff, may appear to be attractive to boards because they have less money to give. The negative aspects of such contract clauses are no less in a time of strict budgetary control.

Early Board Offers and Settlements

Because notice of the severity of the cap problem has just reached boards, some districts are in the position of having made offers in excess of reasonability considering their estimated cap for 1978-1979. Some have settled agreements on that basis.

What can be done? Certainly, unless the union mutually agrees to allow the board to modify its offer, there is the real possibility that a lessening of the offer will be regarded as bad faith by the other side. Some boards would have tied their money concessions to potential concessions by the union. If the union has failed to make the concessions required, the board may have little or no legal difficulty in modifying its money offer.

Boards which reserved adoption/ratification to the full board may also be able to legally reject an excessive agreement. However, the board should act as soon as possible to instruct its negotiating committee not to move beyond an offer which the full board is willing to ratify. Failure to do so can harm the board's ratification or rejection rights later.

Boards which have settled have a far different problem. In the private sector, the parties can renegotiate a contract. Certainly, most language items can be renegotiated if both parties agree to. There is real question whether both parties may agree to discard the new salary guide adopted in an agreement and negotiate a new one. If this appears necessary in your case, first determine the union's position. Then check out the legality (under Title 18A) of such renegotiation.

In any event, board offers and settlements should not be modified without intensive consultation with your negotiator and/or board attorney.

Mediation and Factfinding Implications

For many districts the cap is now the single most important factor in negotiations. It should not only be in the forefront of your negotiations approach but should also be an open element in mediation and factfinding.

Factfinding opinions and awards will be significantly different in the future if the cap is understood by both the board and the factfinder. While the factfinder can be generally informed about the cap system and its overall effects, you must present your situation in a clear and complete manner. The factfinder is not responsible to protect your interests. And while the factfinder desires an agreement which both parties can live with, he or she will not do your work for you. Preparation for factfinding should begin now even if you are not yet in mediation.

The Board's Budget and Negotiations

While not directly tied to the cap system, this topic is one which will be raised increasingly this year. Unions may contend that the board has budgeted too little in the salary account in order to bargain in good faith concerning salary.

In three separate cases before PERC in 1976, unions argued that the boards' salary lines didn't allow "meaningful" negotiations to take place. In each case, the board involved had sufficient money allocated to fund what was its current offer. PERC rejected the unions' contentions noting that no party has an obligation to make a concession in order to be in compliance with the good faith obligation. Therefore, there is no minimal increased amount of money in the salary line which is necessary to negotiate in good faith.

Confidential Employees

Confidential employees have no right under law to form, join or assist a labor organization for the purposes of collective negotiations. Just as superintendents and assistant superintendents are specifically excluded from coverage under the PERC Statute, so too are those employees "*whose functional responsibilities or knowledge in connection with the issues involved in the collective negotiations process would make their membership in any appropriate negotiating unit incompatible with their official duties.*"[1] The wisdom behind this exclusion is axiomatic. You cannot, as management, be expected to carry out your responsibility to negotiate in good faith when an employee sitting across the bargaining table from you at 7:00 p.m. was delegated the responsibility of typing up the board's proposals at 4:00 p.m. the same day! If an employee is intimately and regularly involved in assisting in the negotiating process, or if the employee's supervisor formulates, determines or effectuates, management policies in labor relations, then that employee's job responsibilities are confidential in nature.

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[1] This is the definition of "confidential employees" in Section 34:13A-3 (g) of the PERC Statute.

In a PERC case, the hearing examiner dealt with several issues raised by the employee organization following the decision of the board to unilaterally remove the secretary to the Assistant Superintendent from the clerical employees' bargaining unit. The hearing examiner found that it was NOT an unfair practice for an employer to 1) unilaterally remove a confidential employee from an existing bargaining unit, and 2) require resignation of membership in the association or be terminated from employment. The employer may petition PERC for a unit clarification, but is not required either to seek PERC clarification or to negotiate with employee representatives. It is incumbent upon the board however, to demonstrate that the employee's actual job responsibilities are indeed confidential. In this case it was demonstrated that since the Assistant Superintendent attended all Board meetings and executive sessions and consulted with the Board and its negotiators on a regular basis with respect to negotiation positions and the effect of negotiated agreements upon the day-to-day administration of the District, then this would naturally result in his sole secretary being privy to labor relations memoranda circulated among the top administrators and having direct access to the Assistant Superintendent's files relating to his participation in such matters. The Hearing Examiner wrote:

> The Assistant Superintendent here is intimately and regularly involved in assisting in the negotiating process and in determining a labor relations policy by virtue of his role in regularly advising the Superintendent on negotiations policy and his decisions in the grievance process affecting terms and conditions of employment.
>
> To the extent such duties involve the preparation of memoranda and reports, (his secretary) would naturally receive knowledge of recommendations and determinations which may well form the basis for the filing of grievances by individual employees or the Association under the individual grievance procedure of the parties' collective negotiations agreement and therefore raise issues involved in the collective negotiations process. In addition, (the Assistant Superintendent's) role as Board representative on second step grievances under the current agreement necessarily provides (his secretary) with intimate knowledge of positions of the Board on employee or Association grievances prior to the Assistant Superintendent's determination. . .
>
> A Commission rule does provide a means by which a public employer may petition for clarification of a negotiating unit by seeking to exclude employees as confidential. This rule is a proper implementation of the Commission's exclusive authority under the Act to determine the unit appropriate for purposes of collective negotiation. However, even the rule does not require that a public employer must file such a petition in order to eliminate an alleged confidential employee from a negotiating unit. Subsection (a) of the rule provides that "the majority representative or the public employer *may* file a petition for clarification . . . [Emphasis added.]
>
> . . . a public employer, at its risk, may unilaterally remove a public employee from an existing negotiating unit under the facts disclosed in the instant proceeding and deal directly with such an employee, by-passing the majority employee organization.

In regard to those boards who currently have confidential employees in a bargaining unit, it is strongly urged that no action be taken without prior competent professional advice from a labor relations expert. The legal rights on one hand and the practical ramifications on the other must be weighed prior to any action taken by a board.

A Selected Bibliography

Books and films are available to any member of a New Jersey board of education or designated individual on a free-loan basis from the association's library. Periodicals, journals and subscription pamphlets may be obtained through specific inquiry and will be sent in photographic form. Several sources are listed below. Many more are available.

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ZACK, ARNOLD. Understanding Grievance Arbitration in the Public Sector. Washington, D.C.: U.S. Department of Labor, c1974, 37 pp.

— Understanding Factfinding and Arbitration in the Public Sector. Washington, D.C.: U.S. Department of Labor, 1974, 38 pp.

REGULAR PUBLICATIONS DEALING WITH NEGOTIATIONS

(These may be ordered on a subscription basis from the respective publisher.)

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Baywood Publishing Company, Inc. JOURNAL OF COLLECTIVE NEGOTIATIONS IN THE PUBLIC SECTOR. 43 Central Drive, Farmingdale, New York 11735, issued quarterly.

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Legal Intelligencer, The. NEW JERSEY PUBLIC EMPLOYEE REPORTER, 66 North Juniper Street, Philadelphia, Pa. 19107, issued bi-weekly.

Negotiations Management Service, a Division of Educational Service Bureau, Inc. NEGOTIATIONS MANAGEMENT. 1835 K Street, N.W., Washington, D.C. 20006, issued monthly during the school year.

Personnel Administration Service, a Division of Educational Service Bureau, Inc. PERSONNEL NEWS FOR SCHOOL SYSTEMS. 1835 K Street, N.W., Washington, D.C. 20006, issued monthly.

United States Department of Labor, Bureau of Labor Statistics. MONTHLY LABOR REVIEW. Documents, United States Government Printing Office, Washington, D.C. 20402, issued monthly.

Decisions Affecting Negotiations

Listed below are a number of court and PERC decisions which affect negotiations:[1]

Authority of a Board's Negotiating Team

Bergenfield Board of Education and Bergenfield Education Association, PERC No. 90, 7/75.

East Brunswick Board of Education and East Brunswick Administrators' Association, PERC No. 77-6, decided 8/76.

Good Faith Negotiations

State v. N.J. Council of State College Locals, 141 N.J. Super 470 (App. Div. 1976). *The obligation to negotiate in good faith does not include an obligation to make a concession on any given issue or to agree to the proposal of the other party. Hard bargaining concept is accepted.*

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[1] PERC or the courts can alter case law at anytime. Before relying on these decisions, please check on whether they are currently good law. In addition, this is not an exhaustive list. For example, as of writing, there were at least 60 PERC scope of negotiations decisions. Only a few are listed here.

Scope of the Grievance Procedure

PBA Local No. 130 and Township of West Windsor, PERC No. 77-59, decided 4/77. *PERC holds grievance procedure must provide employees some method of appealing the interpretation, application or violation of policies, agreements and administrative decisions affecting them.*

Scope of Negotiations[2]

The Dunellen Trilogy

***Dunellen Board of Education v. Dunellen Education Association, 64 N.J. 17** (1973). *Abolition of department chairmanship.*

***Burlington County College Faculty Association v. Board of Trustees, 64 N.J.** 10 (1973). *Negotiability of school calendar.*

***Board of Education of Englewood v. Englewood Teachers Association,** 64 N.J. 1 (1973). *Placement on salary guide.*

Bridgewater-Raritan Regional Board of Education and Bridgewater-Raritan Education Association, Inc., PERC No. 77-21, decided 10/76. *If a "permissive" topic is negotiated, it may be arbitrated if otherwise arbitrable under the parties' agreement.*

***Clifton Teachers Association, Inc. v. Board of Education of Clifton, 186** N.J. Super 336 (App. Div. 1976). *Right to withhold salary increments not negotiable.*

***Board of Education of the School District of the Township of Edison v. Edison Township Education Association**, App. Div., 1975, unreported. *Appointment of one person to coaching position rather than another not negotiable.*

Board of Education of the City of Englewood and Englewood Teachers' Association, PERC No. 76-23, 3/76. *Fair dismissal procedures and evaluation procedures.*

The Board of Education of the City of Englewood and Englewood Teachers' Association, ___N.J. Super ___, (App. Div., 1977, unreported). *The statutory power to reduce personnel cannot be the subject of negotiation or arbitration.*

Local 195, IFPTE and Local 518, SEIU and State of New Jersey, PERC No. 77-57, decided 4/77 and **State of New Jersey**, PERC No. 77-67, decided 5/77. *According to PERC, change in the law means that general statutes giving authority to employers do not render topics illegal. Specific statutes governing terms and conditions cannot be abrogated by contract.*

Long Branch Education Association, Inc. v. Board of Education of the City of Long Branch, Monmouth County, ___N.J.___, Docket No. A-130, June 24, 1977. *Assignment of teachers to lunchroom supervision.*

***Board of Education of the Township of North Bergen v. North Bergen Federation of Teachers**, 141 N.J. Super 97 (App. Div. 1976). *Criteria for promotions non-negotiable.*

Piscataway Township Board of Education and Piscataway Township Principals Association, PERC No. 77-37, decided 1/77. *Length of work year may not be reduced without negotiations.*

Ridgefield Park Board of Education and Ridgefield Park Education Association, PERC No. 77-71, decided 6/77. *C. 212 as it relates to C. 123.*

Rutgers, The State University and Rutgers Council of American Association of University Professors, PERC No. 76-18, 1/76. *Budget formulation, curriculum, affirmative action plans, productivity studies, calendar, class size, other topics.*

The Board of Education of the Borough of Verona and Verona Education Association, PERC No. 77-42, decided 2/77. *Distinction drawn between a policy decision and the obligation to negotiate the impact of that decision.*

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[2] Some of these decisions occurred prior to the passage of Chapter 123 or were based on actions which arose prior to that date. They are marked with an asterisk.

Employer Changes in Terms and Conditions

Borough of Glassboro Board of Education and Glassboro Teachers Association, PERC No. 77-8, decided 8/76. *Under certain circumstances, an employer may be able to unilaterally set "reasonable work rules."*

City of Jersey City and Local 246, Jersey City Public Employers, Inc., PERC No. 77-58, decided 4/77. *Under certain circumstances, an employer may unilaterally change terms and conditions after a "genuine impasse" occurs.*

State of New Jersey and Local 195, IFPTE and Local 518, SEIU, PERC No. 77-40, decided 2/77. *Under certain circumstances, a union can waive the right to require negotiations prior to an employer's change in terms and conditions.*

Confidential Employees

Passaic County Regional High School, District No. 1 Board of Education and Passaic Valley Office Workers Association, PERC No. 77-19, decided 10/76. *Confidential employees are not "employees" within the meaning of C.123 and are not afforded its protections.*

Association Offices

Central Office:	P.O. Box 909, Trenton, N.J. 08605 609-695-7600
Field Offices:	Marlboro 201-462-8805
	Hammonton 609-561-5900
	Denville 201-625-2150

NJSBA Analysis of the PERC Law

Introduction

Any labor relations law provides the outline for collective bargaining. Labor relations laws, including the one that governs New Jersey public sector bargaining, describe how a union becomes a majority representative, the obligations on both employers and unions to bargain in good faith, what is negotiable, how the parties can break impasses and the type of agency or commission that enforces the law. Without this type of guidance, bargaining would be disjointed and, in some cases, intolerably confusing.

In 1968, the New Jersey Legislature passed and the Governor signed what is known as Chapter 303. That law guaranteed that all public employees in the state would have the right to collectively organize and bargain with public employers. In 1974, after a spirited legislative debate, Chapter 303 was amended by Chapter 123 of the Public Laws of 1974. As a result of both of these laws, New Jersey possesses what is called a "comprehensive" labor relations statute. In several other states only certain kinds of provisions, such as impasse procedures, are dictated by law. However, New Jersey's public employment bargaining is intensively directed by statute.

The rules and regulations of the Public Employment Relations Commission, the decisions of the Commission and court review of those decisions are all based upon the terms of the labor laws cited above. For that reason, the logical starting place in an analysis of the effect of the decisions of PERC upon public education is with the law itself. What follows is a summary analysis of the provisions of Chapters 303 and 123 along with some suggested areas of concern and citations for information on the subject area in supplied materials.

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What Every School Board Member Should Know About the Public Employment Relations Law (referred to as The PERC Law)

34:13A-1 Short Title.

This Act shall be known and may be cited as the "New Jersey Employer-Employee Relations Act."

Self explanatory.

34:13A-2 Declaration of Policy.

It is hereby declared as the public policy of this State that the best interests of the people of the State are served by the prevention or prompt settlement of labor disputes both in the private and public sectors; that strikes, lockouts, work stoppages and other forms of employer and employee strife, regardless where the merits of the controversy lie, are forces productive ultimately of economic and public waste; that the interests and rights of the consumers and the people of the State, while not direct parties therein, should always be considered, respected and protected; and that the voluntary mediation of such public and private employer-employee disputes under the guidance and supervision of a governmental agency will tend to promote permanent, public and private employer-employee peace and the health, welfare, comfort and safety of the people of the State. To carry out such policy, the necessity for the enactment of the provisions of this Act is hereby declared as a matter of legislative determination.

Many pieces of legislation contain overall goals in order to inform citizens and the enforcing agency alike of the intentions of the Legislature.

34:13A-3 Definitions.

When used in this Act:

(b) The term "commission" shall mean New Jersey Public Employment Relations Commission.

(c) The term "employer" includes an employer and any person acting, directly or indirectly, on behalf of or in the interest of an employer with the employer's knowledge or ratification, but a labor organization, or any officer or agent thereof, shall be considered an employer only with respect to individuals employed by such organization. This term shall include "public employers" and shall mean the State of New Jersey, or the several counties and municipalities thereof, or any other political subdivision of the State, or a school district, or any special district, or any authority, commission, or board, or any branch or agency of the public service.

These provisions of the act define PERC and "employer." As noted, all public employers within the State of New Jersey are covered by the terms of the Act.

(d) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer unless this Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of or in connection with any current labor dispute or because of any unfair practice and who has not obtained any other regular and substantially equivalent employment. This term, however, shall not include any individual taking the place of any employee whose work has ceased as aforesaid, nor shall it include any individual employed by his parent or spouse, or in the domestic service of any person in the home of the employer, or employed by any company owning or operating a railroad or railway express subject to the provisions of the Railway Labor Act. This term shall include any public employee, i.e. any person holding a position, by appointment or contract, or employment in the service of a public employer, except elected

This provision defines "employee." (See Confidential Employees, earlier. See The PERC Law, pp. 30-31.)

34:13A-3 Definitions. (Cont'd)

officials, members of boards and commissions, managerial executives and confidential employees.

(e) The term "representative" is not limited to individuals but shall include labor organizations, and individual representatives need not themselves be employed by, and the labor organizations serving as a representative need not be limited in membership to the employees of, the employer whose employees are represented. This term shall include any organization, agency or person authorized or designated by a public employer, public employee, group of public employees, or public employee association to act on its behalf and represent it or them.

The phrase "representative" is defined. Very often the phrases "labor organization," "majority representative" and "union" are used interchangeably with "representative." It should be noted that employees may form their own organization or affiliate, in almost all cases, with any other organization which chooses to represent them.

(f) "Managerial executives" of a public employer means persons who formulate management policies and practices, and persons who are charged with the responsibility of directing the effectuation of such management policies and practices, except that in any school district this term shall include only the superintendent or other chief administrator, and the assistant superintendent of the district.

This is the first of two major exclusions of employees from the coverage of the statute. "Managerial executives" are not covered by the terms of the law, may not be represented in collective bargaining and may be disciplined or discharged for their concerted collective activity. School districts' managerial executives are limited to superintendent or other chief administrator and the assistant superintendent of the district. This is far narrower than the applied definition of managerial executive for other kinds of governmental entities in New Jersey. (See The PERC Law, p. 31.)

(g) "Confidential employees" of a public employer means employees whose functional responsibilities or knowledge in connection with the issues involved in the collective negotiations process would make their membership in any appropriate negotiating unit incompatible with their official duties.

This is the second general exclusion of employees from the coverage of the act. "Confidential employees" also have no right to collectively bargain and can be forbidden from doing so. (See Confidential Employees, earlier. See The PERC Law, p. 31.)

34:13A-5.1 Establishment of Division of Public Employment Relations and Division of Private Employment Dispute Settlement.

There is hereby established a Division of Public Employment Relations and a Division of Private Employment Dispute Settlement.

(a) The Division of Public Employment Relations shall be concerned exclusively with matters of public employment related to determining negotiating units, elections, certifications and settlement of public employee representative and public employer disputes and grievance procedures. For the purpose of complying with the provisions of Article V. Section VI, paragraph 1 of the New Jersey Constitution, the Division of Public Employment Relations is hereby allocated within the Department of Labor and Industry, and located in the city of Trenton, but notwithstanding said allocation, the office shall be independent of any supervision or control by the Department or by any board or officer thereof.

This provision establishes the Public Employment Relations Commission. It should be noted that while PERC is, for budgetary reasons, located within the Department of Labor and Industry, it is independent of the control of that department and is not subject to the requirement that it be represented in legal matters by the Attorney-General of the State.

34:13A-5.2 Public Employment Relations Commission; Powers and Duties; Members; Terms; Compensation.

1 There is hereby established in the division of Public
2 Employment Relations a commission to be known as the
3 New Jersey Public Employment Relations Commission.
4 This commission, in addition to the powers and duties
5 granted by this Act, shall have in the public employment
6 area the same powers and duties granted to the labor
7 mediation board in sections 7 and 10 of chapter 100,
8 P.L. 1941 and in sections 2 and 3 of chapter 32,
9 P.L. 1945. This commission shall make policy and estab-
10 lish rules and regulations concerning employer-employee
11 relations in public employment relating to dispute settle-
12 ment, grievance procedures and administration including
13 enforcement of statutory provisions concerning represent-
14 ative elections and related matters and to implement fully
15 all the provisions of this Act.

16 The commission shall consist of 7 members to be appointed
17 by the Governor, by and with the advice and consent of
18 the Senate. Of such members, 2 shall be representative
19 of public employers, 2 shall be representative of public
20 employee organizations and 3 shall be representative of
21 the public including the appointee who is designated as
22 chairman. Of the first appointees, 2 shall be appointed
23 for 2 years, 2 for a term of 3 years and 3, including the
24 chairman, for a term of 4 years. Their successors shall be
25 appointed for terms of 3 years each and until their suc-
26 cessors are appointed and qualified, except that any person
27 chosen to fill a vacancy shall be appointed only for the
28 unexpired term of the member whose office has become
29 vacant.
30 The members of the commission, other than the chair-
31 man, shall be compensated at the rate of $100.00 for each
32 6 hour day spent in attendance at meetings and consulta-
33 tions and shall be reimbursed for necessary expenses in
34 connection with the discharge of their duties except that
35 no commission member who receives a salary or other
36 form of compensation as a representative of any employer
37 or employee group, organization or association, shall be
38 compensated by the commission for any deliberations
39 directly involving members of said employer or employee
40 group, organization or association. Compensation for
41 more, or less than, 6 hours per day, shall be prorated in
42 proportion to the time involved.
43 The chairman of the commission shall be its chief execu-
44 tive officer and administrator, shall devote his full time
45 to the performance of his duties as chairman of the
46 Public Employment Relations Commission and shall
47 receive such compensation as shall be provided by law.
48 The term of the member of the commission who is de-
49 signated as chairman on the date of enactment of this
50 Act shall expire on the effective date of this Act.

This provision establishes the general outline of the responsibilities of the Public Employment Relations Commission.

This part of the legislation establishes a seven-member Public Employment Relations Commission. This form of a panel is known as "tri-partite." Labor, management, and neutral members make the final determinations of the Commission in the areas of representation, scope of negotiations, and unfair practice disputes. In addition, the overall Commission is responsible for personnel assignment, the establishment of rules and regulations, impasse procedures and other related items. In many day-to-day operations activities, the Commission has delegated its responsibilities to the Chairman, who is the only full-time member of the Commission. (See The PERC Law, pp. 1-2.)

The current members of the Public Employment Relations Commission are:

Jeffrey B. Tener (Chairman), Bernard Hartnett and Charles Parcells, the public representatives; Frederick Hipp from the NJEA and Francis Forst from a State-related union representing employee organizations and Mark Hurwitz from the New Jersey School Boards Association representing public employers. Currently, there is a vacancy for the second public employer position on the Commission.

The Committee on Ethical Standards has indicated that the public employer and employee organization representatives may not discuss or vote on any matter involving any of their constituents. Therefore, Dr. Hurwitz may not speak or vote on any school board matter, Dr. Hipp may not deal with any NJEA related matter and Mr. Forst may not deal with matters involving his own union. There is some question whether this is the intention of the Legislature. If you read lines 30 through 40 especially that part beginning at the end of line 34 (beginning "except that") you will notice that it appears that the Legislature intended that these representatives could vote on matters involving their organizations if they forfeited their compensation rate.

34:13A-5.3 Employee Organizations; Right to Form or Join; Collective Negotiations.

Except as hereinafter provided, public employees shall have, and shall be protected in the exercise of, the right, freely and without fear of penalty or reprisal, to form, join and assist any employee organization or to refrain from any such activity;

This is the heart of the law. It guarantees that public employees may collectively bargain. All obligations of employee organizations and employers flow from these five lines.

provided, however, that this right shall not extend to elected officials, members of boards and commissions, managerial executives, or confidential employees, except in a school district the term managerial executive shall mean the superintendent of schools or his equivalent,

This provision excludes "managerial executives" and "confidential employees" from the coverage of the statute. Note that, as mentioned above, "managerial executive" is defined to mean only the superintendent of schools or his equivalent. (See **Confidential Employees**, earlier. See **The PERC Law**, pp. 30-31.)

nor, except where established practice, prior agreement or special circumstances, dictate the contrary, shall any supervisor having the power to hire, discharge, discipline, or to effectively recommend the same, have the right to be represented in collective negotiations by an employee organization that admits non-supervisory personnel to membership, and the fact that any organization has such supervisory employees as members shall not deny the right of that organization to represent the appropriate unit in collective negotiations;

This provision dictates the placement of supervisors in appropriate bargaining units. (For a definition of "appropriate unit," see **The PERC Law**, p. 33.) New bargaining units created after the passage of Chapter 303 were required, except in certain circumstances, to separate supervisors from non-supervisory employees. Practically, only units containing supervisors and non-supervisors existing before 1968 (a "mixed unit") were valid under the law. We have read these lines also to mean that an organization that is affiliated with another organization that represents non-supervisory employees may not represent supervisors. For example, it has been our contention that new supervisory bargaining units could not be represented by the NJEA which also, of course, represents non-supervisors. (See **The PERC Law**, pp. 31-32.)

and provided further, that, except where established practice, prior agreement, or special circumstances dictate the contrary, no policeman shall have the right to join an employee organization that admits employees other than policemen to membership.

This provision excludes police officers and those employees with related police functions from "mixed bargaining units."

The negotiating unit shall be defined with due regard for the community of interest among the employees concerned, but the commission shall not intervene in matters of recognition and unit definition except in the event of a dispute.

This sentence applies the standard labor relations concept of "community of interest" to the determination of which classifications of employees should be in an appropriate unit. It also indicates that PERC should abide by the determination of the parties, if they mutually agree, on the appropriateness of the bargaining unit.

Representatives designated or selected by public employees for the purposes of collective negotiation by the majority of the employees in a unit appropriate for such purposes or by the majority of the employees voting in an election conducted by the commission as authorized by this Act shall be the exclusive representatives for collective negotiations concerning the terms and conditions of employment of the employees in such unit.

This section indicates that an employee organization must be a majority representative in order to represent employees. Furthermore, it also indicates that majority representatives have a right to bargain over "terms and conditions of employment." (See **The PERC Law**, p. 7.)

The determination of what is a "term and condition of employment" is a subject for the "scope of negotiations" determination procedure of the Commission. This will be discussed later.

34:13A-5.3 Employee Organizations; Right to Form or Join; Collective Negotiations. (Cont'd)

Nothing herein shall be construed to prevent any official from meeting with an employee organization for the purpose of hearing the views and requests of its members in such unit so long as (a) the majority representative is informed of the meeting; (b) any changes or modifications in terms and conditions of employment are made only through negotiations with the majority representative; and (c) a minority organization shall not present or process grievances. Nothing herein shall be construed to deny to any individual employee his rights under Civil Service laws or regulations. When no majority representative has been selected as the bargaining agent for the unit of which an individual employee is a part, he may present his own grievance either personally or through an appropriate representative or an organization of which he is a member and have such grievance adjusted.

Minority organizations have certain limited rights under the law. These are spelled out in this section. Individual employee rights to be protected by Civil Service law and to file grievances when there is no majority representative are also laid out. (See The PERC Law, pp. 32-33.)

A majority representative of public employees in an appropriate unit shall be entitled to act for and to negotiate agreements covering all employees in the unit and shall be responsible for representing the interest of all such employees without discrimination and without regard to employee organization membership.

This provision indicates that majority representatives are responsible to represent the interests of all members of the bargaining unit, not only union members. (See The PERC Law, p. 11.)

Proposed new rules or modifications of existing rules governing working conditions shall be negotiated with the majority representative before they are established.

This provision has created serious controversy. It is not clear whether the phrase "rules or modifications of existing rules governing working conditions" is synonymous with the phrase "terms and conditions of employment." The position of majority representatives has been that any rule adopted by a public employer that affects in any way "working conditions" must be negotiated in advance of implementation. Determinations of the "scope of negotiations" will focus on the meaning of this sentence.

In addition, the majority representative and designated representatives of the public employer shall meet at reasonable times and negotiate in good faith with respect to grievances and terms and conditions of employment.

This sentence establishes the obligation of the public employer and the majority representative to negotiate in good faith. The concept of "good faith negotiations" is a critical one to the conduct of collective bargaining. (See Good Faith Bargaining, earlier. See The PERC Law, pp. 7-10.)

When an agreement is reached on the terms and conditions of employment, it shall be embodied in writing and signed by the authorized representatives of the public employer and the majority representative.

This indicates that agreements on terms and conditions of employment must be placed in a contract signed by both parties.

Public employers shall negotiate written policies setting forth grievance procedures by means of which their employees or representatives of employees may appeal the interpretation, application or violation of policies, agreements, and administrative decisions affecting them, provided that such grievance procedures shall be included in any agreement entered into between the public employer and the representative organization.

This section of the law requires that grievance procedures be negotiated and contained in all labor contracts between employers and employee groups. (See Is Everything You Do Grievable?, earlier.)

34:13A-5.3 Employee Organizations; Right to Form or Join; Collective Negotiations. (Cont'd)

Such grievance procedures may provide for binding arbitration as a means for resolving disputes.

This provision indicates that employers and employee organizations may negotiate binding arbitration procedures as the termination point in the grievance procedure. It does not require that a labor contract contain binding grievance arbitration.

Notwithstanding any procedures for the resolution of disputes, controversies or grievances established by any other statute, grievance procedures established by agreement between the public employer and the representative organization shall be utilized for any dispute covered by the terms of such agreement.

This sentence is highly controversial and could be critical to the operation of governmental units, including school boards. The phrase "disputes, controversies" has significant meaning in the maintenance of education law. Disputes over education law are decided by the Disputes and Controversies Section of the Department of Education and the sentence cited refers to "other statutes." Unions argue that this provision was intended to mean that employees could, in addition to going through administrative agencies such as the Commissioner of Education, also file grievances and go to arbitration on matters affecting them. Management groups have argued that, at the very least, the only disputes that could be submitted to arbitrators would be those affecting "terms and conditions of employment." Employer groups also cite the phrase in the last line "for any dispute covered by the terms of such agreement" as defining and limiting the grievance procedure to the terms of the agreement.

34:13A-5.4 Prohibited Practices; Commission Proceedings

a. Employers, their representatives or agents are prohibited from:

(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this Act.

(2) Dominating or interfering with the formation, existence or administration of any employee organization.

(3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this Act.

(4) Discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under this Act.

(5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative.

(6) Refusing to reduce a negotiated agreement to writing and to sign such agreement.

(7) Violating any of the rules and regulations established by the commission.

b. Employee organizations, their representatives or agents are prohibited from:

(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this Act.

(2) Interfering with, restraining or coercing a public employer in the selection of his representative for the purposes of negotiations or the adjustment of grievances.

These are the prohibitions and requirements specifically enumerated as unfair practices under the law. (For an in depth discussion of unfair practices, see The PERC Law, pp. 4-12.)

34:13A-5.4 Prohibited Practices; Commission Proceedings (Cont'd)

31 (3) Refusing to negotiate in good faith with a public
32 employer, if they are the majority representative of em-
33 ployees in an appropriate unit concerning terms and condi-
34 tions of employment of employees in that unit.
35 (4) Refusing to reduce a negotiated agreement to writing
36 and to sign such agreement.
37 (5) Violating any of the rules and regulations established
38 by the commission.

39 c. The commission shall have exclusive power as herein-
40 after provided to prevent anyone from engaging in any
41 unfair practice listed in subsections a. and b. above. When-
42 ever it is charged that anyone has engaged or is engaging in
43 any such unfair practice, the commission, or any designated
44 agent thereof, shall have authority to issue and cause to be
45 served upon such party a complaint stating the specific
46 unfair practice charge and including a notice of hearing
47 containing the date and place of hearing before the com-
48 mission or any designated agent thereof; provided that no
49 complaint shall issue based upon any unfair practice occur-
50 ring more than 6 months prior to the filing of the charge
51 unless the person aggrieved thereby was prevented from
52 filing such charge in which event the 6 months period
53 shall be computed from the date he was no longer so
54 prevented.

55 In any such proceeding, the provisions of the Administra-
56 tive Procedure Act P.L. 1968, C. 410 (C. 52:14B-1 et seq.)
57 shall be applicable, evidence shall be taken at the hearing
58 and filed with the commission. If, upon all the evidence
59 taken, the commission shall determine that any party
60 charged has engaged or is engaging in any such unfair
61 practice, the commission shall state its findings of fact
62 and conclusions of law and issue and cause to be served
63 on such party an order requiring such party to cease and
64 desist from such unfair practice, and to take such reasonable
65 affirmative action as will effectuate the policies of this Act.
66 All cases in which a complaint and notice of hearing on a
67 charge is actually issued by the commission, shall be pro-
68 secuted before the commission or its agent, or both, by the
69 representative of the employee organization or party
70 filing the charge or his authorized representative.

This section of the law gives PERC the exclusive power to prevent unfair practices, to investigate charges, to issue complaints and to hold hearings. It also limits the ability of PERC in issuing unfair practice findings to events which occurred no more than six months before the date of the filing of the charge. (For a discussion of unfair practice procedures that the Commission now follows, see The PERC Law, pp. 13-15.)

Certain provisions of this paragraph have been called into question by recent Appellate court decisions involving Galloway Township Board of Education. It seemed that PERC had the authority to issue what are called "cease and desist orders" after they found that a public employer or employee organization was engaging in an unfair practice. Cease and desist orders have traditionally stated that the party charged with an unfair practice has committed a violation of law and that they will not do so in the future and it normally includes the posting of a notice that is available for employees to read. In the Galloway case, an Appellate panel said PERC did not have the authority to issue cease and desist orders when the underlying problem that the parties faced had been resolved.

In addition, the same panel in another matter involving the Galloway Board indicated that the Commission does not have the power to order that back pay be paid for work not done to employees who are discharged or discriminated against because of their union activity. PERC had read the phrase on lines 64 and 65 "to take such reasonable affirmative action" as meaning that they had broad authority to order back pay. Both of these cases will be subject to further court review. It should also be noted that the prosecution of an unfair practice charge before a hearing examiner of the Commission is made by the charging party, not the agency.

d. The commission shall at all times have the power and duty, upon the request of any public employer or majority representative, to make a determination as to whether a matter in dispute is within the scope of collective negotiations. The commission shall serve the parties with its findings of fact and conclusions of law. Any determination made by the commission pursuant to this subsection may be appealed to the Appellate Division of the Superior Court.

One of the most important powers that PERC has is to determine what it is that is basically negotiable under New Jersey law. Prior to passage of Chapter 123, the courts of the State had made determinations of "scope of negotiability." Under the new amendment, PERC was given responsibility to make those determinations. It should be noted that several court decisions have indicated that the courts also retain equal responsibility to make determinations and do not have to wait for an appeal from a PERC decision. (For an examination of the procedures PERC uses to determine the scope of negotiations, see **The PERC Law**, pp. 18-20.)

While the law does not state item by item what must be negotiated, PERC adopted rules and regulations in January, 1975, which established three categories of negotiations: "required," "permissive" and "illegal." It is the creation of the "permissive" subject of negotiations which has raised a serious problem in respect to the scope of bargaining. (See **The PERC Law**, pp. 16-18; see **The Scope of Bargaining**, earlier.)

One other outcome of this section has been the determination by PERC that school boards may make managerial decisions without being required to negotiate but must always negotiate over the impact on terms and conditions of employment flowing from those decisions before the decisions are implemented. (See **Can You Ever Change Terms and Conditions?**, earlier.)

e. The commission shall adopt such rules as may be required to regulate the conduct of representation elections, and to regulate the time of commencement of negotiations and of institution of impasse procedures so that there will be full opportunity for negotiations and the resolution of impasses prior to required budget submission dates.

The timetable for mediation and factfinding has been deleted but a date for the beginning of negotiations will be retained. Negotiations on a successor agreement should begin, absent mutual consent, no later than 120 days prior to the required budget submission date. This would normally be about October 1st.

f. The commission shall have the power to apply to the Appellate Division of the Superior Court for an appropriate order enforcing any order of the commission issued under subsection c. or d. hereof, and its findings of fact, if based upon substantial evidence on the record as a whole, shall not, in such action, be set aside or modified; any order for remedial or affirmative action, if reasonably designed to effectuate the purposes of this Act, shall be affirmed and enforced in such proceeding.

This provision would normally give PERC great powers in the unfair practice and scope areas. However, several recent court decisions have indicated that the courts of the State will be independently reviewing the decisions of the Commission to judge if those cases are in error.

34:13A-6 Powers and Duties.

(b) Whenever negotiations between a public employer and an exclusive representative concerning the terms and conditions of employment shall reach an impasse, the commission, through the Division of Public Employment Relations shall, upon the request of either party, take such steps as it may deem expedient to effect a voluntary resolution of the impasse. In the event of a failure to resolve the impasse by mediation the Division of Public Employment Relations is empowered to recommend or invoke factfinding with recommendation for settlement, the cost of which shall be borne by the commission.

This paragraph establishes the responsibility of PERC for the resolution of impasses in negotiations between employers and employee organizations. The traditional methods of impasse resolution include mediation and factfinding. In certain critical situations, PERC will assign what they call a "super conciliator" to help resolve disputes after factfinding has been attempted and failed. (For a discussion of impasse procedures and techniques, see The PERC Law, Chapter IV; see Impasse Procedures, earlier.)

34:13A - unnumbered

Notwithstanding the provisions of P.L. 1974, C. 123, the cost of factfinding shall be borne equally by the public employer and the exclusive employee representative.

As noted by the unnumbered amendment to the law passed in June of 1976, both parties now share the cost of factfinding. There have been several attempts over the last year to amend the law and require State assumption of factfinding costs.

(c) The board in private employment through the Division of Private Employment Dispute Settlement, and the commission in public employment, through the Division of Public Employment Relations, shall take the following steps to avoid or terminate labor disputes: (1) to arrange for, hold, adjourn or reconvene a conference or conferences between the disputants of one or more of their representatives or any of them; (2) to invite the disputants or their representatives or any of them to attend such conference and submit, either orally or in writing, the grievances of and differences between the disputants; (3) to discuss such grievances and differences with the disputants and their representatives; and (4) to assist in negotiating and drafting agreements for the adjustment in settlement of such grievances and differences and for the termination or avoidance, as the case may be, of the existing or threatened labor dispute.

These provisions simply set forth some of the alternative methods of dispute resolution which the Commission may adopt. Also the Commission can use other impasse procedure techniques which they deem necessary in order to avoid labor disputes.

(d) The commission, through the Division of Public Employment Relations, is hereby empowered to resolve questions concerning representation of public employees by conducting a secret ballot election or utilizing any other appropriate and suitable method designed to ascertain the free choice of the employees. The division shall decide in each instance which unit of employees is appropriate for collective negotiation,

This provision gives PERC the power to determine the appropriate unit and, through secret ballot election, the majority representative. (For a discussion of representation procedures employed by the Commission, see The PERC Law, pp. 33-40.)

provided that, except where dictated by established practice, prior agreement, or special circumstances, no unit shall be appropriate which includes (1) both supervisors and nonsupervisors, (2) both professional and nonprofessional employees unless a majority of such professional employees vote for inclusion in such unit, or, (3) both craft and noncraft employees unless a majority of such craft employees vote for inclusion in such unit. All of the powers and duties conferred or imposed upon the division that are necessary for the administration of this subdivision, and not inconsistent with it, are to that extent hereby made applicable. Should formal hearings be required, in the opinion of said division to determine the appropriate unit, it shall have the power to issue subpoenas

The provision on lines 42 and 43 regarding supervisory and non-supervisory inclusion in "mixed units" is the second reference in the law to this situation. Also, this section indicates that professional and non-professional employees may not be included in an appropriate bargaining unit unless the professional employees vote to be included.

34:13A-6 Powers and Duties. (Cont'd)

as described below, and shall determine the rules and regulations for the conduct of such hearing or hearings.

(e) For the purposes of this section the Division of Public Employment Relations shall have the authority and power to hold hearings, subpoena witnesses, compel their attendance, administer oaths, take the testimony or deposition of any person under oath, and in connection therewith, to issue subpoenas duces tecum, and to require the production and examination of any governmental or other books or papers relating to any matter described above.

(f) .....In carrying out of any of its work under this Act, the commission may designate one of its members or an officer of the commission to act on its behalf and may delegate to such designee one or more of its duties hereunder and, for such purpose, such designee shall have all of the powers hereby conferred upon the commission in connection with the discharge of the duty or duties so delegated.

(g) The board and commission may also appoint and designate other persons or groups of persons to act for and on its behalf and may delegate to such persons or groups of persons any and all of the powers conferred upon it by this Act so far as it is reasonably necessary to effectuate the purposes of this Act. Such persons shall serve without compensation but shall be reimbursed for any necessary expenses.

(h) The personnel of the Division of Public Employment Relations shall include only individuals familiar with the field of public employee-management relations. The commission's determination that a person is familiar in this field shall not be reviewable by any other body.

These sections give PERC the power to issue subpoenas, administer oaths, take testimony, delegate responsibilities to staff employees and hire personnel.

34:13A-7 Arbitration.

Whenever a controversy shall arise between an employer and his employees which is not settled either in conference between representatives of the parties or through mediation in the manner provided by this Act, such controversy may, by agreement of the parties, be submitted to arbitration, one person to be selected by the employer, one person to be selected by the employees, and a third selected by the representatives of the employer and employees, and in the event of any such appointment or selection not being made upon the request of the parties in the controversy, the department may select the third person to arbitrate the matter submitted; provided, however, that the failure or refusal of either party to submit a controversy to arbitration shall not be construed as a violation of the policy or purpose of this Act, or of any provision thereof, nor shall failure or refusal to arbitrate constitute a basis for any action of law or suit in equity.

This section is little used and refers to a method of dispute resolution called "interest arbitration," in which the parties submit all unresolved matters in negotiations to an outside panel of arbitrators to make a determination. The School Boards Association has opposed the imposition of mandated interest arbitration on school boards in New Jersey. This provision is voluntary and must be agreed to by both parties before it can be implemented.

34:13A-8.1 Effect of Act Upon Prior Agreements.

Nothing in this Act shall be construed to annul or modify, or to preclude the continuation of any agreement during its current terms heretofore entered into between any public employer and any employee organization nor shall any provision hereof annul or modify any pension statute or statutes of this State.

This section of the law was the most hotly debated during the fight over Chapter 123 and is still the focus of most attention in the area of scope of negotiations. Chapter 303 contained the following language:

> ...nor shall any provision hereof
> annul or modify any statute or
> statutes of this state.

That language was amended by Chapter 123 by

34:13A-8.1 Effect of Act Upon Prior Agreements (Cont'd)

placing the word "pension" before the word "statute" on line 5.

PERC has held that existing statutes which expressly forbid a board from taking an action make that topic an illegal subject. If the existing statute allows a board to take an action but does not require or prohibit that action and if the matter is a term and condition of employment, that topic is a required subject. If the board is allowed to take an action (but not required to do so or prohibited from doing so) on a non-term and condition, PERC will hold that to be a permissive topic.

Additionally, where the statute sets a minimum term and condition (e.g. ten days sick leave) the employer must negotiate in good faith over a union demand to increase that benefit but may not negotiate below the minimum. Where the statute sets a maximum (tenure after 3 years), the parties may negotiate an earlier tenure date, but not one longer than three years.

These holdings rest primarily on two cases currently being appealed to the courts.

34:13A-8.2 Filed Contracts in Public Employment.

The commission shall collect and maintain a current file of filed contracts in public employment. Public employers shall file with the commission a copy of any contracts it has negotiated with public employee representatives following the consummation of negotiations.

Self explanatory.

34:13A-8.3 Development and Maintenance of Programs.

The commission in conjunction with the Institute of Management and Labor Relations of Rutgers, the State University, shall develop and maintain a program for the guidance of public employees and public employers in employee-management relations, to provide technical advice to public employees and public employers on employee-management programs, to assist in the development of programs for training employee and management personnel in the principles and procedures of consultation, negotiation and settlement of disputes in the public service, and for the training of employee and management officials in the discharge of their employee-management relations responsibilities in the public interest.

Rutgers is the resource and research center for studies on labor relations. They currently carry out certain training functions in the field of labor relations and do limited studies on the Commission's decisions.

34:13A-11 Rules.

The board shall have power to adopt, alter, amend or repeal such rules in connection with the voluntary mediation of labor disputes in private employment and the commission shall have the same powers in public employment, as may be necessary for the proper administration and enforcement of the provisions of this Act.

Self explanatory.

34:13A-12 Construction.

Nothing contained in this Act shall be construed as interfering with, impeding or diminishing in any way any right guaranteed by law or by the Constitution of the State or of the United States.

34:13A-13 Separability of Provisions.

If any clause, sentence, paragraph or part of this Act, or the application thereof to any person or circumstances, shall for any reason be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this Act, and the application of such provisions to other persons or circumstances, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof, directly involved in the controversy in which such judgment shall have been rendered and to the person or circumstances involved. It is hereby declared to be the legislative intent that this Act would have been adopted had such invalid provisions not been included herein.

This section is used by employee groups to argue that the collective bargaining statute does not remove legislative benefits granted by the New Jersey Legislature.

This is a standard provision in any law enacted.

NJSBA
Analysis of the NJEA Sample Agreement for 1978-1979

This year's NJEA Sample Agreement is identical to the one prepared last year. Our commentary is not. Legislation, court decisions and economic factors place certain clauses in a different light. This analysis contains substantial revisions designed to provide you with a timely and accurate approach to contract analysis.

On the left of each page appears the actual text of the NJEA Sample Agreement. On the right of each page appears our commentary on potentially dangerous areas.

PREAMBLE

This Agreement entered into this day of
19 , by and between the Board of Education of , the City
of , New Jersey, hereinafter called the "Board," and
Association, hereinafter called the "Association."

WITNESSETH:

WHEREAS, the Board and the Association recognize and declare that providing a quality education for the students of the School District is their primary aim and that the character of such education depends predominately upon the quality of teaching, the availability of materials, the functional utility of facilities, the release of imagination in planning, the application of democratic processes in administration, and the maintenance of high morale among the teaching faculty, and

WHEREAS, the members of the teaching profession are particularly qualified to advise the formulation of policies and programs designed to improve educational standards, and

WHEREAS, the Board has an obligation, pursuant to Chapter 303, Public Laws 1968 to negotiate with the Association as the representative of employees hereinafter designated with respect to the terms and conditions of employment, and

WHEREAS, the parties have reached certain understandings which they desire to confirm in this Agreement, be it

RESOLVED, in consideration of the following mutual covenants, it is hereby agreed as follows:

Article I, *Recognition*

A. Unit

The Board hereby recognizes the Association as the exclusive and sole representative for collective negotiation concerning grievances and terms and conditions of employment for all personnel whether under contract, on leave, on a per diem basis, employed or to be employed by the Board, but excluding:

(Insert positions excluded from the negotiating unit.)

This section notes the date the contract was entered and is standard and acceptable.

The primary purposes of a labor agreement are: (1) to state the terms and conditions of employment of employees; (2) to place limitations on the ability of the employer to change those terms and conditions; and (3) to specify certain kinds of duties or requirements of employees. If a clause in the contract does not fulfill one or more of these purposes, it is extraneous.

The clauses in this section are extraneous. It is better deleted inasmuch as it may be used by an arbitrator or other third party to modify the meaning of the Agreement. The General Counsel of the NEA states: "*From a strict legal point of view they are not necessary. They may, however, be viewed by an arbitrator or a court as providing a clue to the intention of the parties in construing ambiguous provisions in the agreement. If such statements are to be included, therefore, the language should be carefully drafted.*" (See The Law and Practice of Teacher Negotiations, 3:16.)

This is standard language.

The definition of the bargaining unit is very important. The board has the same right as the union to insist upon the proper negotiation unit. The unit should be limited to classifications of employees which have what is called a "community of interest." In a teachers' unit, this would include all certificated teaching personnel under contract. The unit may also include nurses, psychologists, social workers. The unit will differ from district to district.

Under Chapter 123, the superintendent and assistant superintendent must be excluded from all bargaining units. In addition, new supervisory bargaining units may not be represented by unions which admit nonsupervisors to membership (such as the NJEA). Confidential employees also are excluded from bargaining units under Chapter 123. (See **Confidential Employees**, earlier.) Should the board have any questions concerning the propriety or appropriateness of the bargaining unit as constituted, it may file with P.E.R.C. a petition for clarification of unit. (For a full discussion of bargaining units see PERC, pp. 30-43)

The inclusion of the phrase "on leave" has been used in some districts to argue that an employee on extended leave is entitled to all health care premiums paid by the board for other employees. This should be deleted or other sections of the contract should specifically exempt employees on extended leave from such benefits.

B. Definition of Teacher
Unless otherwise indicated, the term "teachers," when used hereinafter in this Agreement, shall refer to all professional employees represented by the Association in the negotiating unit as above defined, and references to male teachers shall include female teachers.

Paragraph B means that every right granted a classroom teacher applies equally to all professionals who are not classroom teachers. Under special circumstances, the board may wish to reserve certain rights and privileges only to classroom teachers, such as preparation periods or tuition reimbursement.

Article II, *Negotiation of Successor Agreement*

A. Deadline Date
The parties agree to enter into collective negotiation over a successor Agreement in accordance with Chapter 123, Public Laws 1974 in a good-faith effort to reach agreement on all matters concerning the terms and conditions of teachers' employment. Such negotiations shall begin not later than August 1 of the calendar year preceding the calendar year in which this Agreement expires. Any agreement so negotiated shall apply to all teachers, be reduced to writing, be signed by the Board and the Association, and be adopted by the Board.

Under the Rules and Regulations of P.E.R.C., there is now a beginning date for negotiations on successor agreements. This is, as it has been for the past two years, about October 1st. If the parties agree to begin at a later date they may do so. The timetable established by P.E.R.C. for mediation and factfinding has been abandoned.

The sample agreement would begin bargaining on or before August 1st. In effect, boards would be bargaining over a successor to a contract which has not even taken effect. While timing of negotiations is within the power of the parties subject only to P.E.R.C.'s rules, this last point should be kept in mind. (With respect to the language in the last sentence, see **Negotiating Committees and the Board of Education**, earlier.)

B. Grants from Federal or State Agencies
The Board agrees that the procedure set forth in this ARTICLE shall be applicable to the determination and implementation of the grants to be requested by the Board pursuant to any federal and/or state laws, provided, however, that the relevant time-table shall be shortened if necessary to comply with time requirements in making or processing applications under the relevant federal or state laws.

C. Increase in State Aid
The Board agrees to reopen negotiations and permit amendments to any section of this

Boards should reject B. and C. These call for automatic reopening of a contract in certain circumstances. When the contract is reached, it is preferable that it resolve all issues for its entire term. (See the "Fully-Bargained Clause" in the section of this

Agreement whenever state and/or federal funds in addition to and/or in excess of those amounts previously anticipated for the fiscal year(s) covered by this Agreement have been appropriated. The Board shall so inform the Association within five (5) days of its notification of the amounts to be received in such subsequent state and/or federal appropriation.

analysis entitled Board Proposals.) No mention is made, it is noted, of reopening negotiations in the event of a decrease in State or Federal aid.

D. Modification

This Agreement shall not be modified in whole or in part by the parties except by an instrument in writing duly executed by both parties.

Section D. is a standard clause and should be retained in the agreement.

Article III, *Grievance Procedure*

The grievance procedure may be the most important section of any contract. Ideally, a grievance procedure will define a grievance, identify who may file a grievance, set a time limit on the filing of a grievance and detail individual steps through which a grievance must pass. Grievance procedures can provide a positive means for resolution of disputes. A recent decision by P.E.R.C. complicates the board's approach to the grievance procedure. (See Is Everything You Do Grievable, earlier.) The advice we've given in that article is also contained in what follows.

A. Definitions

1. Grievance

A "grievance" is a claim by a teacher or the Association based upon the interpretation, application, or violation of this Agreement, policies or administrative decisions affecting a teacher or a group of teachers.

Definition: As long as West Windsor is good law, it is strongly recommended that the board seek two procedures in the agreement or carefully detail grievances that begin and end at different levels.

Boards should only agree to submit grievances to binding arbitration which arise under the express terms of the agreement. Grievances over "board policies and administrative decisions" should not fall under an arbitration clause.

Under the recommended grievance procedures, grievances can be defined as listed in this Sample Agreement paragraph. However, grievances over alleged violation or misinterpretation would proceed through all grievance steps including binding arbitration. Grievances concerning "policies" would start and end with the board. Grievances concerning "administrative decisions" would start with the administrator responsible for the decision and end with the board.

These different initiation and terminal steps must be spelled out clearly within the contractual grievance procedure.

Boards are reminded that West Windsor is being appealed to the courts. If the decision is reversed or modified you will be informed immediately. If you do

2. Aggrieved person

An "aggrieved person" is the person or persons or the Association making the claim.

3. Party in interest

A "party in interest" is the person or persons making the claim and any person including the Association or the Board, who might be required to take action or against whom action might be taken in order to resolve the claim.

B. Purpose

The purpose of this procedure is to secure, at the lowest possible level, equitable solutions to the problems which may from time to time arise affecting teachers. Both parties agree that these proceedings will be kept as informal and confidential as may be appropriate at any level of the procedure.

C. Procedure

1. Time limits

The number of days indicated at each level should be considered as a maximum and every effort should be made to expedite the process. The time limits specified may, however, be extended by mutual agreement.

2. Year end grievances

In the event a grievance is filed at such time that it cannot be processed through all the steps in this grievance procedure by the end of the school year, and, if left unresolved until the beginning of the following school year, could result in irreparable harm to a party in interest the time limits set forth herein shall be reduced so that the grievance procedure may be exhausted prior to the end of the school year or as soon thereafter as is practicable.

3. Level one – principal or immediate superior

A teacher with a grievance shall first discuss it with his principal or immediate superior, either directly or through the Association's designated representative, with the objective of resolving the matter informally.

4. Level two – superintendent

If the aggrieved person is not satisfied with the disposition of his grievance at Level One, or if no decision has been rendered within five (5) school days after the presentation of the grievance, he may file the grievance in writing with the Association within five (5)

reach an agreement on a broader definition of "grievance," it is suggested that you include the following:

> Should the obligation to
> include the above procedure
> be reversed by court decision,
> said provision is null and void.

Who May File a Grievance: Some boards limit the filing of a grievance to individual teachers. A recent Appellate decision has held that Chapter 123 allows a union to file a grievance even when no individual bargaining unit member seeks to grieve. This decision is being appealed. Traditionally, management and labor have been able to negotiate over the question of who can initiate a grievance. If the union can file a grievance despite specific contrary language in the contract, there seems to be no need to alter such contrary language.

The purpose of the grievance procedure is not necessarily to achieve "equitable" solutions, but to resolve differences concerning the contract. The sample language grants unlimited discretion to an arbitrator to fashion an "equitable" solution according to his or her personal definition of justice.

Time Limit: The sample agreement places rigid time limits on the board's administrative personnel but places no time limit on the grievant. It is in the interest of the parties that a time limitation be placed in the contract. If you find that you do not have enough time at any step to adequately consider a grievance, propose different time limitations. The contracts in the private sector often place a 3 day limit on the initial filing of grievances. While this may seem unduly restrictive, two to three weeks would not seem so.

In the sample agreement, there is no time limit on the filing of a grievance. That time limit should appear prior to or in the first step of the procedure.

The sample agreement's procedure begins with the principal or immediate school days after the decision at Level One or ten (10) school days after the grievance was presented, whichever is sooner. Within five (5) school days after receiving the written grievance, the Association shall refer it to the superintendent of schools.

5. Level three – arbitration

(a) If the aggrieved person is not satisfied with the disposition of his grievance at Level Two, or if no decision has been rendered within ten (10) school days after the grievance was delivered to the superintendent, he may, within five (5) school days after a decision by the superintendent or fifteen (15) school days after the grievance was delivered to the superintendent, whichever is sooner, request in writing that the Association submit its grievance to arbitration. If the Association determines that the grievance is meritorious, it may submit the grievance to arbitration within fifteen (15) school days after receipt of a request by the aggrieved person.

(b) Within ten (10) school days after such written notice of submission to arbitration, the Board and the Association shall attempt to agree upon a mutually acceptable arbitrator and shall obtain a commitment from said arbitrator to serve. If the parties are unable to agree upon an arbitrator or to obtain such a commitment within the specified period, a request for a list of arbitrators may be made to the American Arbitration Association by either party. The parties shall then be bound by the rules and procedures of the American Arbitration Association in the selection of an arbitrator.

(c) The arbitrator's decision shall be in writing and shall be submitted to the Board and the Association and shall be final and binding on the parties.

superior and goes on to the superintendent. Those boards which have department chairmen who report to principals or unit leaders may desire to guarantee that both supervisory levels be part of the procedure.

Boards should note with interest that there is no place in the NJEA sample agreement for the board of education. As the legally constituted body responsible for education, this omission is inexcusable. The grievance steps should reflect the actual chain of supervision in your school district. The board's role in the procedure would normally follow the superintendent's or administrative principal's.

Boards differ on whether they desire to have themselves, advisory or binding arbitration as the last step of the grievance procedure. No board is required to agree to binding arbitration. Prior to doing so you should be sure that you can operate the school system adequately with the definition of a grievance and the contract clauses to which you have agreed. Binding arbitration can prove harmful especially where you have agreed to a "savings clause," a "past practice clause," or general goal statements. Remember, no matter how responsible you believe the union to be, expect the organization to seek the most favorable (in their eyes) interpretation of a given clause. Can you now live with that interpretation? The amount of no or yes answers you give to this question may help you determine whether you desire to agree to binding arbitration.

If the union is intent on gaining binding grievance arbitration, they should be willing to remove any "past practice" clause. In addition, the board should insist on a "no strike or work stoppage clause."

If you do agree to binding arbitration, it may be wise to consider a contract limitation on the issues that may be arbitrated. Matters which would traditionally be heard by the Commissioner of Education and the non-retention of a non-tenured teacher are two areas that might be excluded.

The following language might serve to limit the arbitrator to his or her

(d) In the event that arbitrability of a grievance is at issue between the parties, jurisdiction to resolve the issue shall rest solely with the arbitrator selected in accordance with the provisions of Section C.5 (b) of this Article.

(e) The costs for the services of the arbitrator, including per diem expenses, if any, and actual and necessary travel, subsistence expenses and the cost of the hearing room shall be borne equally by the Board and the Association. Any other expenses incurred shall be paid by the party incurring same.

D. Rights of Teachers to Representation

1. Teacher and association

Any aggrieved person may be represented at all stages of the grievance procedure by himself, or, at his option, representative(s) selected or approved by the Association. When a teacher is not represented by the Association, the Association shall have the right to be present and to state its views at all stages of the grievance procedure.

2. Reprisals

No reprisals of any kind shall be taken by the Board or by any member of the administration against any party in interest, any representative, any member of the Association, or any other participant in the grievance procedure by reason of such participation.

E. Miscellaneous

1. Group grievance

If, in the judgment of the Association, a grievance affects a group or class of teachers, the Association may submit such grievance in writing to the superintendent directly and the processing of such grievance shall be commenced at Level Two. The Association may process such a grievance through all levels of the grievance procedure even though the aggrieved person does not wish to do so.

2. Written decisions

Decisions rendered at Level One which are unsatisfactory to the aggrieved person and all decisions rendered at Levels Two and Three of the grievance procedure shall be in writing setting forth the decision and the reasons therefore and shall be transmitted promptly to all parties in interest and to the Association. Decisions rendered at Level Three shall be in accordance with the procedures set forth in Section C, paragraph 5 (c) of this ARTICLE.

3. Separate grievance file

All documents, communications and records dealing with the processing of a grievance shall be filed in a separate grievance file and shall not be kept in the personnel file of any of the participants.

4. Forms

Forms for filing grievances, serving notices, taking appeals, making reports and recommendations, and other necessary documents shall be prepared jointly by the superintendent and the Association and given appropriate distribution so as to facilitate operation of the grievance procedure.

proper role. "*The arbitrator shall be limited to the issues submitted and shall consider nothing else. The arbitrator can add nothing to nor subtract anything from, the Agreement between the parties.*"

If you have agreed to binding arbitration, it is now critical because of the West Windsor decision to limit such arbitration to the "express terms of the written Agreement." Whether or not you have done that earlier in your procedure, you should do it here also. (Please refer to The Meaning of Good Faith Negotiations, earlier.) This is certainly one issue on which hard bargaining may be required to protect the very functions of public management of education.

Boards should not agree to 5.d. This clause is designed to remove P.E.R.C. and the Courts from making decisions on what is negotiable and is not in the best interest of the board. 5.e. is standard.

D.2. is a paraphrase of law. These protections are guaranteed by the law and need not be included in the contract.

E.1. Note that the grievance would begin with the superintendent rather than the principal or immediate superior.

E.2. You retain the flexibility to agree on various approaches to your procedure. Some boards have highly formalized procedures, with written answers on prepared forms. Others find an informal approach more useful. Use what works for you.

The joint agreement on forms for filing grievances is a standard procedure. However, there need be no agreement to jointly construct forms for the balance of items listed in E.4. Of course, E.4.'s last few phrases

5. Meetings and hearings
All meetings and hearings under this procedure shall not be conducted in public and shall include only such parties in interest and their designated or selected representatives, heretofore referred to in this ARTICLE.

Article IV, *Teacher Rights*

A. Rights and Protection in Representation
Pursuant to Chapter 123, Public Laws 1974, the Board hereby agrees that every employee of the Board shall have the right freely to organize, join and support the Association and its affiliates for the purpose of engaging in collective negotiations and other concerted activities for mutual aid and protection. As a duly selected body exercising governmental power under the laws of the State of New Jersey, the Board undertakes and agrees that it shall not directly or indirectly discourage or deprive or coerce any teacher in the enjoyment of any rights conferred by Chapter 123, Public Laws 1974 or other laws of New Jersey or the Constitutions of New Jersey and the United States; that it shall not discriminate against any teacher with respect to hours, wages, or any terms or conditions of employment by reason of his membership in the Association and its affiliates, his participation in any activities of the Association and its affiliates, collective negotiations with the Board, or his institution of any grievance, complaint or proceeding under this Agreement or otherwise with respect to any terms or conditions of employment.

B. Statutory Savings Clause
Nothing contained herein shall be construed to deny or restrict to any teacher such rights as he may have under New Jersey School Laws or other applicable laws and regulations. The rights granted to teachers hereunder shall be deemed to be in addition to those provided elsewhere.

C. Just Cause Provision
No teacher shall be discharged, disciplined, reprimanded, reduced in rank or compensation, or deprived of any professional advantage, or given an adverse evaluation of his professional services without just cause. Any such action asserted by the Board, or any agent or representative thereof, shall be subject to the grievance procedure herein set forth.

might require a board to distribute grievance forms on a regular basis, a thoroughly ridiculous act.

This is an example of an unnecessary commitment to a paraphrase of the law. An interesting provision here is that only those teachers desiring to support or join the NJEA affiliate are protected. Those teachers who want to belong to another or no labor organization have no similar contract right. Another phrase that you should avoid begins on the fourth line: *"and other concerted activities for mutual aid and protection."* This is not defined and may be used by the union to protect employees engaged in illegal work stoppages such as strikes.

The second sentence is a "past practice" clause. The goal of this sentence is to freeze all existing "benefits." If this sentence is present anywhere in your contract your administrative personnel may never be sure of whether a certain practice is a teacher "benefit." Boards should never agree to a contract clause the meaning of which is unclear. The union should be asked which "benefits" it seeks to guarantee by this sentence. That question may result in a withdrawal of the demand. On the other hand, their answer may make you think twice about agreeing to this sentence. (For a fuller discussion, see **Past Practices**, earlier.)

In section C, the entire paragraph is an enlargement on the basic grievance procedure. Consenting to this paragraph in effect gives a discharged teacher "two bites of the apple." A controversy involving discharge that is grieved under this article and determined against the teacher's interest could, and undoubtedly would be argued again at a formal hearing before the Commissioner. Accordingly, the paragraph as proposed subjects the board to double litigation. This clause is in addition to the rights granted to non-tenure teachers under Chapter 132, P.L. 1975. In addition, it is the Commissioner of Education who is the professional in educational matters, not arbitrators who are essentially experts in contract interpretation. Teachers' unions, which claim a special position on policy-input because of the professionalism of the teaching, should readily recognize this.

D. Required Meetings or Hearings
Whenever any teacher is required to appear before the superintendent or his designee, Board or any committee, member, representative or agent thereof concerning any matter which could adversely affect the continuation of that teacher in his office, position or employment or the salary or any increments pertaining thereto, then he shall be given prior written notice of the reasons for such meeting or interview and shall be entitled to have representative(s) of the Association present to advise him and represent him during such meeting or interview. Any suspension of a teacher pending charges shall be with pay.

The last sentence requires that suspensions be with pay. Suspension of teaching personnel should be without pay because of the difficulty in obtaining reimbursement of monies paid to employees who subsequently lose appeals before the Commissioner.

E. Evaluation of Students
The teacher shall maintain the exclusive right and responsibility to determine grades and other evaluations of students within the grading policies of the School District based upon his professional judgment of available criteria pertinent to any given subject area or activity to which he is responsible. No grade or evaluation shall be changed without approval of the teacher.

This clause may very well be a violation of law. In a decision by the Acting Commissioner of Education in July, 1977, the following appeared:

> *It is essential that local boards must retain such authority of review to prevent assignment of unreasonable or arbitrary grades. The acts of teachers may neither be insulated from administrative review of their supervisors and administrators nor from quasi-judicial review by the Commissioner or judicial review by the courts.*

F. Criticism of Teachers
Any question or criticism by a supervisor, administrator, or board member of a teacher and his instructional methodology shall be made in confidence and not in the presence of students, parents, or other public gatherings.

G. Association Identification
No teacher shall be prevented from wearing pins or other identification of membership in the Association or its affiliates.

F. presents a laudable personnel practice and the Sunshine Law specifically exempts personnel matters. However, criticism of "instructional methodology," for example, could be interpreted to exclude almost any public discussion of general or specific teacher competency.

Article V, *Association Rights and Privileges*

A. Information
The Board agrees to furnish to the Association in response to reasonable requests from time to time all available information concerning the educational program and the financial resources of the district, including but not limited to: class size, number of specialists, annual financial reports and audits, register of certificated personnel, tentative budgetary requirements and allocations, agendas and minutes of all Board meetings, census data, individual and group teacher health insurance premiums and experience figures, names and addresses of all teachers, and such other information that shall assist the Association in developing intelligent, accurate, informed and constructive programs on behalf of the teachers and their students, together with information which may be necessary for the Association to process any grievance or complaint.

A. goes will beyond the legal requirements to provide information. First, the union's right to certain information will rest on an interpretation of Chapter 123. Therefore, there is no need for this clause in the contract. Second, the sample language guarantees that the board will supply data that has little or no relevance to collective negotiations. Particularly disturbing is the reference to "tentative budgetary requirements and allocations," whatever that means.

Unions generally have a right to information possessed by the employer which is reasonably needed to

B. Released Time for Meetings
Whenever any representative of the Association or any teacher participates during working hours in negotiations, grievance proceedings, conferences, or meetings, he shall suffer no loss in pay.

C. Use of School Buildings
The Association and its representatives shall have the right to use school buildings at all reasonable hours for meetings. The principal of the building in question shall be notified in advance of the time and place of all such meetings. No approval shall be required.

D. Use of School Equipment
The Association shall have the right to use school facilities and equipment, including typewriters, mimeographing machines, other duplicating equipment, calculating machines, and all types of audio-visual equipment at reasonable times, when such equipment is not otherwise in use. The Association shall pay for the reasonable cost of all materials and supplies incident to such use, and for any repairs necessitated as a result thereof.

E. Bulletin Boards
The Association shall have, in each school building, the exclusive use of a bulletin board in each faculty lounge and teachers' dining room. The Association shall also be assigned adequate space on the bulletin board in the central office for Association notices. The location of the Association bulletin boards in each room shall be designated by the Association. Copies of all materials to be posted on such bulletin boards shall be given to the building principal, but no approval shall be required.

F. Mail Facilities and Mail Boxes
The Association shall have the right to use the inter-school mail facilities and school mail boxes as it deems necessary and without the approval of building principals or other members of the administration.

G. Office Space
The Association shall be provided without cost to it, with adequate office space in a building at a location and of a description to be mutually agreed upon. The Association shall be allowed to install a telephone in such office at its own expense.

H. Leave for Association President
The Board shall grant up to full leave with pay to the president of the Association during his term in office according to a schedule submitted by the president prior to the beginning of each school year.

I. Released Time for Faculty Representative
The Board shall provide up to ( ) hours per week of released time to a faculty representative designated by the Association in each building to perform his functions as Association representative in the enforcement of this Agreement. Said time shall be in addition to regularly scheduled preparation time and lunch period as provided in this Agreement.

J. Orientation Programs
All orientation programs for new teachers shall be co-sponsored by the Board and the Association with the Association obligated to assume only such costs as may be mutually agreed upon during the planning of such programs. To the extent prohibited by law, the Board shall not be expected to assume the cost of purely social events conducted as part

carry out the union's duty to negotiate on behalf of its members or to fairly process grievances. If you are presented with a demand which you believe goes beyond these standards, consult your board attorney or professional negotiator.

The reference in the latter part of this clause to "developing intelligent, accurate, informed and constructive programs on behalf of the teachers and their students" is inappropriate in a labor contract. The right to have access to reasonable amounts of information is related to the union's bargaining obligations, not the attempt by a labor organization to review educational plans for non-bargaining purposes.

The balance of Article V grants certain rights to the union. You are under no legal obligation to grant any of these rights.

B. could be agreed to if the "no loss of pay" provision covered employees mutually scheduled to participate in union activities.

C. in its "no approval" section could substantially interfere with the educational and/or extracurricular program in the district. It would be wiser to retain prior approval.

D., E. also require no advanced approval. Is this wise?

F. A recent United States Postal Service decision involving the Detroit School System indicates that transmission of union materials through interschool mail channels may be a violation of Federal postal regulations.

G., H. Most districts will find it impossible to comply with these demands.

I. In larger districts, leave is granted in limited amounts. Your circumstance should dictate whether a similar clause is acceptable.

J. makes the union an equal partner with the board and its administration in orientation programs. This clause may violate that provision of Chapter 123 which prohibits an employer from "assisting" a labor organization.

The agreement to Paragraph K. might seriously jeopardize the educational program of districts that might have to rely upon sub-contracting. This might especially be true if boards sub-contract in order to meet T & E mandates.

of such orientation programs, nor shall the Association be expected to assume the cost of speakers, consultants, and services normally considered an appropriate professional in-service training activity of a board of education. Duties and responsibilities of teachers involving student supervision outside of regular class work shall be clearly explained as part of the regular orientation program.

K. Sub Contracting
The Board shall enter into no contract which will result in instruction being provided, supervised, or otherwise influenced by any person or persons, organization, group or company other than properly certificated persons directly employed by the Board or by the Association without the express written approval of the Association.

L. Exclusive Rights
The rights and privileges of the Association and its representatives as set forth in this Agreement shall be granted only to the Association as the exclusive representative of the teachers, and to no other organizations.

Article VI, *Teacher Work Year*

A. In-School Work Year

1. Ten (10) month personnel
The in-school work year for teachers employed on a ten month basis (other than new personnel who may be required to attend an additional ( ) days of orientation) shall not exceed ( ) days.

2. Twelve (12) month personnel
The in-school work year for teachers employed on a twelve (12) month basis shall not exceed ( ) days.

3. Definition of in-school work year
The in-school work year shall include days when pupils are in attendance, orientation days, and any other days on which teacher attendance is required.

4. Inclement weather
Teacher attendance shall not be required whenever student attendance is not required due to inclement weather.

B. School Calendar
The school calendar for 19 - shall be as set forth in Schedule B. Changes in the school calendar shall be made only after agreement between the Association and the Board.

C. Negotiating Calendar in Multi-year Agreements
The school calendar shall be negotiated each year for the term of this Agreement and such negotiations for any particular school year shall begin no later than October 1 of the previous year.

Article VII, *Teaching Hours and Teaching Load*

A. Teacher Day

1. Check-in procedure
As professionals, teachers are expected to devote to their assignments the time necessary to meet their responsibilities, but they shall not be required to "clock in or clock out" by hours and minutes. Teachers shall indicate their presence for duty by placing a check mark in the appropriate column of the faculty "sign-in" roster.

2. Length of the day
The arrival and departure times for all teachers shall be designated in Schedule C; however, their total in-school workday shall consist of not more than ( ) hours and ( ) minutes which shall include a duty-free lunch period as guaranteed to teachers under Section C of this ARTICLE.

3. Arrival and dismissal time
Except as clarified in paragraph 4 below, no teacher shall be required to report for duty earlier than ( ) minutes before the opening of the pupil's school day, and shall be permitted to leave ( ) minutes after the close of the pupil's school day, except as otherwise designated in Schedule C. On Fridays or on days preceding holidays or vacations, the teachers' day shall end at the close of the pupils' day.

4. Extra pay for extra service
Any teacher who is required to work beyond the regular teacher in-school work year as defined in ARTICLE IV, or beyond his total in-school workday as defined in paragraphs 2 and 3 above, shall be compensated at ($) dollars.

A.3. could pose problems to the board. Any agreement concerning the number of work days must be carefully thought out. For example, agreement to a 180 day work year would, under A.3., preclude any required teacher attendance on orientation and planning days.

B. requires the board to negotiate the school calendar. The Burlington County College Supreme Court decision and more recent decisions indicate that, while the actual number of days in the work year is a required subject, the placement of those days is not. Negotiations of a calendar may make it impossible for a board to meet emergencies during the school year or to change its calendar from year to year in order to meet the needs of the educational program.

Most boards have found that local unions have little desire to negotiate the calendar itself. Consultation with teachers, with or without a contract clause, may be all that is needed.

A.1. Boards may desire more proof of presence than a check mark on a roster.

A.2. Certainly, the length of the school day is a proper subject for negotiation.

A.3. In order to protect flexibility in assignment, it would be wise for a board to avoid specifying the actual arrival and dismissal time for teaching personnel.

A.4. Should be refused on the grounds that, as professionals, teachers should perform reasonable amounts of work beyond the normal work day. Under the clause, an argument can be made that grading and preparation must be additionally compensated for.

Few boards have agreed to this

B. Teaching Load

1. Junior and senior high schools

The daily teaching load in the junior and senior high school shall be ( ) teaching periods and shall not exceed ( ) hours of pupil contact per day. Assignment to a supervised study period or non-compensated extra-curricular activity during school hours shall be considered a teaching period for the purpose of this ARTICLE.

2. Elementary schools

The daily teaching load in the elementary schools shall not exceed ( ) hours of pupil contact.

3. Department heads

Department heads shall not be assigned more than ( ) student instruction-supervision periods each day, and shall be excused from regular study hall duties and homeroom assignments. A student instruction-supervision period means any period during which a teacher is responsible for directing the learning or supervising the behavior of students.

4. Instructional planning

Every teacher shall plan and teach course content in the manner he considers most practical and useful. Teachers who have received satisfactory evaluation shall not be required to submit standardized daily or weekly lesson plans which involve a mandated procedure or form. Teachers shall provide substitutes with daily, weekly, and/or alternate plans as needed, according to procedures developed by the principal and the Liaison Committee in each building as hereafter established under ARTICLE XXII of this Agreement.

5. Number of preparations

Junior and senior high school teachers shall not be required to teach more than ( ) subject area(s), nor more than a total of ( ) teaching preparations.

6. Changing teaching stations

Regular classroom teachers in the junior and senior high schools shall not be required to change subject area teaching stations more than ( ) time(s) during the school day.

7. Continuous teaching in secondary schools

Secondary teachers shall not be required to teach continuously for more than ( ) periods, nor ( ) where double periods are used.

8. Continuous teaching in elementary schools

Elementary teachers shall not be required to teach continuously for more than ( ) hours.

C. Lunch Periods

1. Grade level and other

Teachers shall have a daily duty-free lunch period of at least the following lengths:

a. Elementary School ________________
b. Junior High School ________________
c. Senior High School ________________
d. Other ________________

2. Leaving the building

Teachers may leave the building without requesting permission during their scheduled duty-free lunch periods.

D. Meetings

1. Faculty and other

Teachers may be required to remain after the end of the regular workday, without additional compensation, for the purpose of attending faculty or other professional meetings ( ) day(s) each month. Such meetings shall begin no later than ( ) minutes after the student dismissal time and shall run for no more than ( ) minutes. Except in cases of an emergency involving the health and safety of students and teachers, if additional time is needed, students shall be dismissed early.

2. Prior to holidays and weekends

Meetings which take place after the regular in-school workday and which require at-

clause. Most provide some additional compensation for specific duties.

A Commissioner's Decision on non-teaching assignments was recently upheld by the New Jersey Supreme Court. In that decision which supported the right of boards to make assignment of non-teaching duties to teachers, the Commissioner stated:

> *A long history of the teaching and supervising of children in public schools has proven that the teacher, with his/her training, experience and knowledge of children, is the best and most effective person to control such situations. This is the reason why teachers have been relied upon, since the virtual inception of the common school as it was originally known, as the persons best able and most suitable to protect the health, safety and welfare of the tens of thousands of school age children whom parents have entrusted to the care of the public schools.*

Each of the paragraphs in B. - Teaching Load - are designed to limit by contract the amount of teaching or preparation performed by teachers. Obviously, the ability of the district to agree on any of these clauses will rest on its financial ability to pay additional personnel both now and in the future (a clause that gets into a contract is difficult to delete).

B.4. The first sentence is particularly dangerous. It can be argued that supervisors, under this clause, have no right to make determinations as to the course content or competency of the teacher. The balance of the clause may not meet the educational needs of the district.

B.5., 6., 7. and 8. Scheduling and financial considerations will gauge the acceptability of these clauses.

C.2. Some boards may desire to require notice of a teacher leaving.

Paragraph D. would restrict the number of meetings that the administration could require teachers to attend after regular school hours without paying additional compensation for such attendance. The board must consider the desirability that a teacher attend such other functions as PTA meetings and special assignments and programs presented tendance shall not be called on Fridays or on any day immediately preceding any holiday, or other day upon which teacher attendance is not required at school.

3. Association right to speak

An Association representative may speak to the teachers during any meeting referred to in paragraph 1 above for at least ( ) minutes on the request of the representative.

4. Notice and agenda

The notice of and agenda for any meeting shall be given to the teachers involved at least ( ) days prior to the meetings, except in an emergency. Teachers shall have the opportunity to suggest items for the agenda.

5. Evening meetings

Teachers may be required to attend no more than ( ) evening assignments or meetings each school year without additional compensation.

E. Preparation Time

1. Grade level

Classroom teachers shall, in addition to their lunch period, have daily preparation time during which they shall not be assigned to any other duties as follows:

a. Elementary School ________________
b. Junior High School ________________
c. Senior High School ________________
d. Other members of the negotiating unit who are not regular classroom teachers shall be provided with preparation time to the same extent as other teachers.

2. Additional time for exceptions

Any teacher may, subject to Association approval, voluntarily accept a teaching preparation in excess of the maximums stated in Section B, paragraphs 1, 2, and 3 of this ARTICLE and shall be granted another period of preparation each day for each additional preparation assignment.

3. Extra pay and/or released time

a. It is desirable for each teacher to have an uninterrupted preparation period each day. The practice of using a regular teacher as a substitute, thereby depriving him of his preparation period, is undesirable and shall be discouraged. In those cases where regular substitutes are not available, regular teachers who volunteer may be used as substitutes during their non-teaching time. In the absence of volunteers, a teacher may be assigned to serve as substitute. Volunteers and assigned teachers shall be paid at the rate of 1/1000 of their annual contract salary per class covered or the teacher may choose to credit these periods up to a total of ( ) periods which shall entitle him to ( ) additional personal business day(s) to be taken before the end of the current school year. Such coverage shall be arranged by the principal of the school in question and shall be distributed as equitably as possible among the teachers in said school.

b. In those cases where regular substitutes are not available and two classes are to be combined for the day or a major part thereof, the teacher in charge shall be paid 1/200 of his annual contract salary in addition to his regular salary; if the class is divided between two or more other teachers, each teacher teaching any part of the split class shall receive 1/400 of his annual salary in addition to his regular salary.

F. Exceptions

Exceptions to the provisions of Sections A, B, C, D and E above, may be made only in cases of extreme emergency. The Association shall be notified in each such instance, in advance if possible. A disagreement over whether an exception is justified shall be subject to the grievance procedure and shall be initiated at Level Two thereof.

G. Extra-curricular Activities

1. Approved activities

The Board and the Association agree that the extra-curricular activities listed in Schedule E are educationally worthwhile.

2. Salary

Teacher participation in extra-curricular activities which extend beyond the regularly scheduled in-school day shall be voluntary, and shall be compensated according to the rate of pay and/or released time in Schedule E.

3. Staggered schedule

In cases where released time is stipulated for extra-curricular assignments, such time shall be scheduled as a block at the beginning or end of the in-school day and attendance of the teacher at school shall not be required during said time.

H. Field Trips

Field trips shall be scheduled and implemented in a manner which shall be mutually agreed upon by the teachers participating in them. Written permission for field trips shall be obtained from the superintendent to guarantee insurance coverage as a school sponsored activity. For participation in field trips which extend beyond the teacher's in-school workday, and overnight or weekend trips, teachers shall be compensated at the rate set forth in Section A, paragraph 4 of this ARTICLE.

by the students. It is legally questionable whether the union should have a right to speak at meetings which teachers are required to attend.

Paragraph E. must be considered in light of the specific requirements and duties of each classification in the unit. It must be also observed that this provision would result in allowing "preparation time" to all administrators, guidance counselors, nurses, etc. It does not appear reasonable to provide this group of individuals with "preparation time" in light of their duties.

Paragraph F. attempts to establish the procedure and criteria for variation for the agreements concerning the previously discussed sections. The administration should not be prevented from making the necessary decisions in this area.

G.1. should be rejected. An arbitrator could read this clause as forbidding a board from terminating an activity because of the change in educational philosophy or lack of funds.

The board should not agree to paragraph G.2 which states that teacher participation in extra-curricular activities is voluntary. (See also comments concerning Article VII, A.4. above.)

Article VIII, *Teacher Student Ratio*

A. Maximums

The maximum number of pupils per teacher shall be as stated below.

(Illustrative categories)

	19_____	19_____
1. Elementary Levels		
Kindergarten	__________	__________
First Grade	__________	__________
Second Grade	__________	__________
Third Grade	__________	__________
Fourth Grade	__________	__________
Fifth Grade	__________	__________
Sixth Grade	__________	__________
Seventh Grade	__________	__________
Eighth Grade	__________	__________
Other (Pre-kindergarten, pre-first, non-graded primary, non-graded elementary)	__________	__________
2. Secondary Levels (Per period)		
Regular academic classes	__________	__________
Typing	__________	__________
Drafting	__________	__________
Shops	__________	__________
Music	__________	__________
Art	__________	__________
Physical Education	__________	__________
Other	__________	__________
3. Special Education		
Multiple Handicapped	__________	__________
General Orthopedic	__________	__________
Visually Handicapped	__________	__________
Auditory Handicapped	__________	__________
Chronically Ill	__________	__________
Educable	__________	__________
Trainable	__________	__________
Emotionally Disturbed	__________	__________
Neurologically Impaired	__________	__________
Perceptually Impaired	__________	__________
Socially Maladjusted	__________	__________
Communication Handicapped	__________	__________
Other	__________	__________

4. Reduction for exceptions

Any class based on the maximum per teacher limits stated in paragraphs 1, 2 and 3 above shall be reduced when the number of pupils assigned to any room is larger than:

a. The capacity of teaching facilities, number of adequate teaching stations and number of adequate pupil stations available in the room,

b. The appropriateness of the room to content of the course, the methods of instruction to be employed, and the prior preparation of teachers therefore,

c. The availability of equipment for adequate teacher demonstration and student use,

d. Any other conditions which affect the health, safety and supervision of the pupils.

B. Exceptions

Exceptions to the provisions of Section A above may be made only if it is necessary to do so in the best interests of the educational process. The Association shall be notified in each such instance. A disagreement over whether an exception is justified shall be subject to the grievance procedure and shall be initiated at Level Two thereof.

Article VIII is a class size proposal. Class size has been held to be a non-required subject of negotiations. Such rigid limitations as are often proposed by the union are dangerous in times of falling enrollments and uncertain financing. Remember that an agreement on class size this year is just the beginning point for next year's negotiations. Any agreement concerning class size should not restrict a school district from experimenting with various teaching techniques that might require large or small classes, or the use of educational television and computer technology. If a clause is agreed to it would be wise to eliminate the possibility of the matter proceeding to arbitration through the grievance procedure.

Recent arbitration decisions have indicated that seemingly harmless clauses such as, "make every attempt to reduce class size" or "make an effort to reduce class size" will be interpreted on their face. The board may well be required to show that "every effort" or "an attempt" has indeed been made and/or effected. An arbitrator may define "every reasonable effort" radically different from the school district.

The entire article severely limits the ability of the board to lay off for economic reasons.

Article IX, *Specialists*

A. Minimums

The Board and the Association recognize the fact that an adequate number of competent specialists is essential to the operation of an effective educational program. Accordingly, by the beginning of the 19 - school year, there shall be no less than the following number of qualified specialists in each of the listed categories:

What is meant in Article IX, Paragraph A by *"an adequate number of competent specialists is essential to the operation of an effective educational program?"* In all cases, if you don't know what contract language means, be careful!

(Illustrative Categories)

1. Elementary Level	
Art teachers	Not less than 1 for every students
Instrumental music teachers	Not less than 1 for every students
Vocal music teachers	Not less than 1 for every students
Foreign language teachers	Not less than 1 for every students
Physical education teachers	Not less than 1 for every students
Guidance counselors	Not less than 1 for every students
Reading specialist	Not less than 1 for every students
Nurses	Not less than 1 for every students
Instructional media specialists (librarians)	Not less than 1 for every students
2. Secondary Level	
Guidance counselors	Not less than 1 for every students
Reading specialist	Not less than 1 for every students
Instructional media specialists (librarians)	Not less than 1 for every students
Distributive education	Not less than 1 for every students
Nurses	Not less than 1 for every students
3. Special Services	
Remedial reading	Not less than 1 for every students
Speech therapist	Not less than 1 for every students
Learning disability specialist	Not less than 1 for every students
Psychologist	Not less than 1 for every students
Psychiatrist	Not less than 1 for every students
Social worker	Not less than 1 for every students

B. No Reduction

The number of specialists presently employed in categories not listed above shall not be reduced during the term of this Agreement.

C. Substitutes

1. Certification

Positions which are vacant because teachers are temporarily absent shall be filled by teachers who hold a standard certificate issued by the New Jersey State Board of Examiners.

2. List

The Board agrees at all times to maintain an adequate list of substitute teachers who shall be provided with appropriate orientation and training by the administration to help them instruct the classes they cover.

3. Coverage

The Board shall provide substitutes for all personnel in all departments, including special teachers, nurses, clerks and secretaries.

4. Pool

Beginning with the 19 - school year, the Board agrees to employ ( ) unassigned teachers, or ( ) unassigned teachers, ( ) for the elementary schools, ( ) for the middle school and ( ) for the high school who shall be employed full-time to serve in positions to which they may be assigned from day to day. Such teachers shall be required to work each school day in the particular position and school to which they are assigned for that day, and may be assigned to fill positions of teachers who are temporarily absent. Such teachers shall not replace a teacher who is on extended absence or who has left the school district. Such unassigned teachers shall be considered full-time regular staff members for all purposes and shall be entitled to all of the benefits and privileges of assigned teachers as provided by this Agreement or otherwise.

As with the "teacher-student ratio" clause, an agreement in this area can severely limit the flexibility of the board. Paragraph B. also takes away from the board its statutory authority to reduce staff for reasons of economy.

This is the first appearance of a "no reduction provision." An Appellate Court has held issues related to reduction of teaching staff members to be illegal subjects of negotiations. (See The Scope of Bargaining, earlier.)

C.2. What do "adequate" and "appropriate orientation and training" mean?

C.3. In most school districts, this requirement is totally unrealistic.

C.4. Very few boards have agreed to this type of clause.

Article X, *Nonteaching Duties*

A. Intent

The Board and Association acknowledge that a teacher's primary responsibility is to teach and that his energies should, to the extent possible, be utilized to this end. Therefore, they agree as follows:

B. Application

1. List of nonteaching duties

Option (a)

Personnel other than teachers shall perform nonteaching duties and teachers shall not be required to perform the following duties:

1. Nonprofessional assignments, including but not limited to milk distribution and supervision of cafeterias, sidewalks, bus loading or unloading or playgrounds.
2. Collecting money from students.
3. Inventorying and storing books, delivering books to classrooms, duplicating instructional and other materials, keeping registers and cumulative record cards, and other clerical and/or custodial functions.
4. Correcting standardized tests used at the direction of the Board or the Administration.

Option (b)

1. Teachers may volunteer to perform the following nonteaching duties at the rate of $ per period.
   - a. Cafeteria duty
   - b. Supervision of playgrounds
   - c. Supervision of bus loading
   - d. Supervision of bus unloading
   - e. Milk distribution

Nonteaching Duties

2. Personnel other than teachers shall perform nonteaching duties and teachers shall not be required to perform the following duties.
   - a. Collecting money from students.
   - b. Inventorying and storing books, delivering books to classrooms, duplicating instructional and other materials, keeping registers and cumulative record cards, and other clerical and/or custodial functions.
   - c. Correcting standardized tests used at the direction of the Board or the Administration.

2. Secretarial assistance

By the beginning of the 19   -   school year, the Board shall hire one (1) secretary for every   (   ) teachers to assist teachers in the preparation of materials, correspondence, ordering supplies and other duties related exclusively to teachers.

3. Noneducational activities

Activities which have no educational objective shall be barred from the classroom. There shall be no collection of funds from students for:

- a. Activities in which all pupils are expected to participate which should be legitimately financed by the Board.
- b. Other activities of such a desirable educational nature that they should be legitimately financed by the Board.
- c. Activities and charitable purposes not appropriate or directly related to the age and interests of the pupils.
- d. Activities and charitable purposes beyond the ability to pay of the least able pupil in the class.

4. Transporting students

a. Teachers shall not be required to drive students. A teacher may do so voluntarily, however, with the advance approval of his principal or immediate supervisor. He shall be compensated at the rate of   (¢) cents per mile for the use of his own automobile.

b. By the beginning of the 19   -   school year, the Board shall cover all damages, losses, and expenses incurred by a teacher arising out of the authorized use of his automobile in the performance of school duties.

Paragraph A. of Article X is a goal statement and should not be agreed to.

The sample agreement allows the local union to seek a clause requiring the board to pay teachers for these "non-professional" duties. If the district can afford aides to perform any or all of these duties, the board could consider agreeing to various parts of B.1., 2. and 3. This could be used as a concession in return for equivalent bargaining concessions by the union. In tight economic times, these clauses can present difficulty.

Teacher organizations had historically opposed assignment of non-teaching duties to teachers on the grounds that such duties were non-professional. B.1. option (a) is consistent with that position. B.1. option (b) makes such assignments purely voluntary. You should refer to the Commissioner's decision cited in Article VII, A.4 above.

Article XI, *Teacher Employment*

A. Certification

1. Standard certificates

The Board agrees to hire only fully certificated teachers holding standard certificates issued by the New Jersey State Board of Examiners for every teaching assignment.

2. Notification

Upon employment the superintendent shall report to the Association in writing the certificates and degrees held, major and minor fields of study, and prior experience of each new teacher.

B. No Reduction

The Board agrees there shall be no reduction in the number of teachers from the

Article XI brings the union into the hiring process. This area is considered, for good reason, a basic management prerogative.

There is no valid reason why the superintendent should be required to "report" to the association the information demanded in paragraph A., clause 2 or other similar items frequently demanded.

previous year in positions defined in the unit represented by the Association as heretofore specified in ARTICLE I, Section A, of this Agreement for the duration of the Agreement.

C. Non-Certificated Personnel

The duties of non-certificated personnel shall be confined solely and exclusively to such duties as would assist certificated professional personnel in the performance of their respective duties. In no case shall any non-certificated employee be requested or required to perform any duty previously performed by a duly certificated professional employee.

D. Placement on Salary Schedule

1. Adjustment to salary schedule

Each teacher shall be placed on his proper step of the salary schedule as of the beginning of the 19 - school year in accordance with paragraph 2 below. Any teacher employed prior to February 1 of any school year shall be given full credit for one (1) year of service toward the next increment step for the following year.

2. Credit for experience

Credit up to the ( ) step of any salary level on the Teacher Salary Schedule shall be given for previous outside teaching experience in a duly accredited school upon initial employment in accordance with the provisions of Schedule A. Additional credit not to exceed ( ) years for military experience or alternative civilian service required by the Selective Service System and credit not to exceed ( ) years for Peace Corps, VISTA or National Teacher Corps work and time spent on a Fulbright Scholarship shall be given upon initial employment. As of the beginning of the 19 - school year, the aforementioned credit shall be given to any presently employed teacher who has not heretofore received it.

E. Returning to the District

A teacher with previous teaching experience in the School District shall upon returning to the system receive full credit on the salary schedule for all outside teaching experience, military experience or alternative civilian service required by the Selective Service System, Peace Corps, VISTA or National Teacher Training Corps work and time spent on a Fulbright Scholarship up to the maximum set forth in Section B above. Such teachers who have not been engaged in other teaching or the other activities indicated above shall, upon returning to the system, be restored to the next position on the salary schedule above that at which they left.

F. Previous Sick Leave Accumulation

Previously accumulated unused leave days shall be restored to all returning teachers.

G. Notification of Contract and Salary

Teachers shall be notified of their contract and salary status for the ensuing year no later than ———————— ———.

Article XII, *Salaries*

A. Salary Schedule

The salary of each teacher covered by this Agreement is set forth in Schedule "A" which is attached hereto and made a part hereof.

B. Procedure for Withholding Employment

Regular salary guide increments excluding adjustment may be withheld in whole or in part for inefficiency or other just cause related to the performance of duties and only in accordnace with the following:

1. Subject to ARTICLE IV, Section C.

2. That the procedures be adhered to as outlined in ARTICLE XVIII, "Teacher Evaluation".

3. The immediate superior and/or the principal shall not forward any recommendation to withhold a teacher's increment or a part thereof through the superintendent to the Board unless at least (90) ninety calendar days prior thereto, and in no case later than April 1 of the preceding school year in which such action would take effect, the principal has given to the teacher against whom the recommendations shall be made, written notice of the alleged cause(s) for the recommendations specifying the nature thereof with such particulars as to furnish the teacher an opportunity to correct and overcome the same.

4. Once a recommendation is forwarded to the teacher and the Board, the teacher may within ten (10) school days file a grievance commencing at the Superintendent level. No action shall be taken on the recommendation until the grievance is heard according to the grievance procedure as set forth heretofore in ARTICLE III of this Agreement.

5. Any action by the Board to withhold an increment or any part thereof shall be subject to appeal to arbitration as set forth in ARTICLE III of this Agreement. The arbitrator shall have the authority to restore all or part of the increment withheld retroactively.

According to a recent Appellate decision (decided March 28, 1977), the statutory power to reduce personnel as authorized in N.J.S.A. 18A:28-9 cannot be the subject of negotiation or arbitration. Therefore, this is an illegal subject of negotiations.

The board should retain the right of its administrators to assign such duties and responsibilities to non-certificated personnel as may be necessary for the efficient operation of the schools. The board should resist paragraph C.

Paragraphs D.2. and E.: N.J.S.A. 18A:29-9 prescribes that initial placement on the salary schedule "shall be at such point as may be agreed upon." The board should retain the prerogative of such placement.

D.2. requires that the board grant credit for outside volunteer employment. This clause might result in the non-hiring of teaching personnel with this background because of the additional cost to districts.

Paragraph F.: There is no statutory compulsion that boards grant such a provision.

Agreement as to dates involved in Article XI, paragraph G., should be made only after careful consultation with the superintendent.

Early notification dates have caused extreme difficulties in many districts.

Paragraph B. of this article restricts the board's authority to withhold an increment to the extent that the action would be subject to the grievance procedure. More properly, the question of whether there was just cause for withholding of an increment should be decided by the Commissioner of Education as provided by law. (N.J.S.A. 19A:29-14). (See Is Everything You Do Grievable, earlier.)

Arbitrators should not make decisions concerning the fitness of teachers.

Paragraph 6. creates the absurd situation of a board proving every year that its withholding of an increment once was justified. In effect, the sample clause would reward a teacher who merely performed adequately by restoring to him or her an increment fairly withheld.

6. Salary guide increment or part thereof withheld under this provision shall be restored the following year unless the procedures set forth in this provision are followed once again, in which case the increment or increments previously withheld and any additional increments which may be due may be withheld in whole or in part.

C. Method of Payment

1. Twelve (12) month

Each member employed on a twelve (12) month basis shall have the option of being paid in twenty-four semi-monthly installments or in twelve (12) monthly installments.

2. Ten (10) month

Each teacher employed on a ten (10) month basis shall have the option of being paid in twenty (20) equal semi-monthly installments, or ten (10) equal monthly installments.

3. Summer pay plan

Each teacher may individually elect to have ten (10%) percent of his monthly salary deducted from his pay. These funds shall be paid to the teacher or his estate on the final pay day in June, according to a schedule of payment throughout the summer as requested by the teacher, or upon death or termination of employment, if earlier.

4. Exceptions

When a pay day falls on or during a school holiday, vacation or week-end, teachers shall receive their pay checks on the last previous working day.

5. Final pay

Each teacher shall receive his final pay and the pay schedule for the following year on his last working day in June.

Article XIII, *Teacher Assignment*

A. Notification

1. Date for presently employed teachers

All teachers shall be given written notice of their salary schedules, class and/or subject assignments, building assignments and room assignments for the forthcoming year not later than   A list of said schedules and assignments shall be simultaneously sent to the Association.

2. New teachers

The superintendent shall assign all newly-appointed personnel to their specific positions within that subject area and/or grade level for which the Board has appointed them. The superintendent shall give notice of assignments to new teachers as soon as practicable, and except in cases of emergency, not later than

3. Revisions

In the event that changes in such schedules, class and/or subject assignments, building assignments, or room assignments are proposed after   , the Association and any teacher affected shall be notified promptly in writing and, upon the request of the teacher and the Association, the changes shall be promptly reviewed between the superintendent or his representative and the teacher affected and at his option a representative of the Association. In the event of any disagreement as to the need and desirability of such changes, the dispute shall be subject to the grievance procedure set forth herein.

B. Assignment Criteria

In order to assure that pupils are taught by teachers working within their areas of competence, teachers shall only be assigned to teach in areas for which they hold a standard teaching certificate issued by the New Jersey State Board of Examiners.

C. Traveling Teachers

1. Schedules

Schedules of teachers who are assigned to more than one school shall be arranged so that no such teacher shall be required to engage in an unreasonable amount of inter-school travel. Such teachers shall be notified of any changes in their schedules as soon as practicable.

2. Expenses

Teachers who may be required to use their own automobiles in the performance of their duties and teachers who are assigned to more than one (1) school per day shall be reimbursed for all such travel at the rate of   (¢) cents per mile for all driving done between arrival at the first location at the beginning of their workday, provided, however, that if the distance from the teacher's home to his first location or from the teacher's last location to his home is greater than the distance between the teacher's home and his base school, he shall be reimbursed for the difference at the rate of (¢) cents per mile.

The board should not agree on a teacher assignment notification date which is earlier than administratively possible. Keep in mind not to set voluntary and involuntary transfer dates later than the agreed-upon notification date for all teaching personnel.

Paragraph 3. makes the arbitrator the decision-maker on teacher assignment disputes. This portion of the paragraph should be denied.

In the event of an increase or decrease in any particular program which results in teachers with tenure becoming available for assignments to teaching positions outside the scope of their certificates and/or their major or minor fields of study, but who might be in a position to obtain emergency certificates for such assignments, would Article XIII, paragraph B., restrict the superintendent from assigning such teachers on emergency certificates?

Article XIV, *Voluntary Transfers and Reassignments*

A. Notification of Vacancies

1. Date

No later than of each school year, the superintendent shall deliver to the Association and post in all school buildings a list of the known vacancies which shall occur during the following school year.

2. Filing requests

Teachers who desire a change in grade and/or subject assignment or who desire to transfer to another building may file a written statement of such desire with the superintendent. Such statement shall include the grade and/or subject to which the teacher desires to be assigned and the school or schools to which he desires to be transferred, in order of preference. Such requests for transfers and reassignments for the following year shall be submitted not later than

3. Posting

As soon as practicable, and no later than , the superintendent shall post in each school and deliver to the Association a system-wide schedule showing the names of all teachers who have been reassigned or transferred and the nature of such reassignment or transfer.

B. Criteria for Assignment

In the determination of requests for voluntary reassignment and/or transfer, the wishes of the individual teacher shall be honored to the extent that the transfer does not conflict with the instructional requirements and best interests of the school system. No such request shall be denied arbitrarily, capriciously, or without basis in fact. If a teacher's request for transfer has been denied, a renewed or subsequent request made in the following school year shall be granted under the conditions described above, unless there is no available position to which the teacher can be transferred or an adequate replacement for the teacher cannot be obtained. If more than one teacher has applied for the same position, the determination as to which teacher shall receive it shall be made by a joint committee consisting of two (2) persons appointed by the principal or immediate superior of the position in question and two (2) persons appointed by the Association.

Article XIV covers voluntary transfers. It may be wise for a board to agree on a transfer procedure. It is not advisable to agree on the criteria to be used in making such transfers. The board should retain a sufficient degree of flexibility to deliver quality education to all students. P.E.R.C. has held that criteria for promotion, transfer, and assignment are not required subjects of negotiation.

Article XIV, paragraph B. raises two questions. First, who makes the determination whether a request to be transferred is in the "best interest of the school system?" Hopefully, not an arbitrator. The board can assure this by adding the phrase, "as determined by the Board of Education." Second, the decision on transfers should not be assigned to a committee made up of union appointees. It is the board which has the public responsibility on all appointments. Individual teachers, acting as committee members, have no such public obligation.

Article XV, *Involuntary Transfers and Reassignments*

A. Use of Voluntary Requests

No vacancy shall be filled by means of involuntary transfer or reassignment if there is a qualified volunteer available to fill said position.

B. Notice

Notice of an involuntary transfer or reassignment shall be given to teachers as soon as practicable, and except in cases of emergency not later than

C. Criteria

When an involuntary transfer or reassignment is necessary, a teacher's area of competence, major or minor field of study, length of service in the School District, length of service in the particular school building, and other relevant factors, including, among other things, state and/or federal laws, rules, regulations or administrative directives, shall be considered in determining which teacher is to be transferred or reassigned.

D. Meeting and Appeal

An involuntary transfer or reassignment shall be made only after a meeting between the teacher involved and the (insert appropriate title) , at which time the teacher shall be notified of the reason therefor. In the event that a teacher objects to the transfer or reassignment at this meeting, upon the request of the teacher, the superintendent shall meet with him. The teacher may, at his option, have Association representative(s) present at such meeting.

E. Priority in Reassignment

A list of open positions in the school district shall be made available to all teachers being involuntarily transferred or reassigned. Such teachers may request the positions, in order of preference, to which they desire to be transferred. All such teachers shall be given adequate time off for the purpose of visiting schools at which open positions exist. Teachers being involuntarily transferred or reassigned from their present position shall have preference over those seeking voluntary transfer or reassignment in regard to choice among those positions which are vacant. A teacher being involuntarily transferred or reassigned shall be placed only in an equivalent position — i.e., one which, among other things does not involve reduction in rank or in total compensation.

Article XV, paragraph A. provides that the mechanism of involuntary transfer cannot be used in instances where there is a "volunteer." It would be entirely legitimate for the board to have reason to pass over a "volunteer" to accomplish an involuntary transfer which it deems to be in the best educational interests of the school district.

Again, criteria are not required subjects of negotiations.

The last sentence of E. prohibits transfers which "among other things does not involve reduction in rank or in total compensation." What are the "other things" referred to?

Article XVI, *Promotions*

A. Positions Included

Promotional positions are defined as follows:

Positions paying a salary differential and/or positions on the administrator-supervisory levels of responsibility including but not limited to positions as (list by title)

All vacancies in promotional positions, including specialists and/or special projects teachers, pupil personnel workers and positions in programs funded by the federal government shall be adequately publicized by the superintendent in accordance with the following procedure:

1. Date of posting

When school is in session, a notice shall be posted in each school as far in advance as practicable, ordinarily at least thirty (30) school days before the final date when applications must be submitted and in no event less than fifteen (15) school days before such date. A copy of said notice shall be given to the Association at the time of posting. Teachers who desire to apply for such vacancies shall submit their applications in writing to the superintendent within the time limit specified in the notice, and the superintendent shall acknowledge promptly in writing the receipt of all such applications. Applications shall be kept on file in the superintendent's office for continual consideration for future vacancies until the office is notified in writing by an applicant that the application is withdrawn.

2. Application procedure

Teachers who desire to apply for a promotional position which may be filled during the summer period when school is not regularly in session shall submit their names to the superintendent, together with the position(s) for which they desire to apply, and an address where they can be reached during the summer. The superintendent shall notify such teachers of any vacancy in a position for which they desire to apply. Such notice shall be sent as far in advance as practicable, ordinarily at least twenty-one (21) days before the final date when applications must be submitted and in no event less than fourteen (14) days before such date. In addition, the superintendent shall, within the same time period, post a list of promotional positions to be filled during the summer period at the administration office, in each school, and a copy of said notice shall be given to the Association.

B. Criteria for Notice

In both situations set forth in Section A above, the qualifications for the position, its duties, and the rate of compensation, shall be clearly set forth. The qualifications set forth for a particular position shall not be changed when such future vacancies occur unless the Association has been notified in advance of such changes and the reasons therefor. A disagreement over the necessity for such changes shall be subject to the grievance procedures set forth in this Agreement. No vacancy in a promotional position shall be filled other than in accordance with the above procedure.

C. Two Optional Plans (Select One)

Option (a)

All qualified teachers shall be given adequate opportunity to make application and no position shall be filled until all properly submitted applications have been considered. The Board agrees to give due consideration to the professional background and attainments of all applicants, and other relevant factors. In filling such vacancies, preference shall be given to qualified teachers already employed by the Board and when all other factors are substantially equal, length of time in the School District shall be the deciding factor. Each teacher applicant not selected shall, upon request, receive a written explanation from the superintendent. Appointments shall be posted in the schools or the giving of notification to the interested teachers. Announcements of appointments shall be made by posting a list in the office of the central administration and in each school building. The list shall be given to the Association and shall indicate which positions have been filled and by whom.

Option (b)

1. All qualified teachers shall be given adequate opportunity to make application for such positions and no positions shall be filled until all properly submitted applications have been considered. The Board agrees to give due weight to the professional background and attainments of all applicants and other relevant factors. In filling such vacancies, preference shall be given to qualified teachers already employed by the Board and when all other factors are substantially equal, length of time in the School District shall be the deciding factor.

2. All promotional positions shall be filled according to the following procedures:

   a. Each applicant who meets the qualifications for a vacancy shall be interviewed by a committee of ( ) persons, ( ) appointed by the superintendent and ( ) appointed by the president of the Association, and a record of the interview shall be filed with the application. Interview ratings for each applicant shall be prepared independently by each member of the committee.

   b. The committee shall then combine the independent interview ratings, together with the applicant's formal training, professional experience and experience in the School District into a total rating.

   c. All applicants shall be placed on a ranked list according to their total ratings.

If the board agrees to a notification procedure for promotions, the time limits agreed-upon must be feasible.

The proposed definition of promotion should include reference not only to increased salary or salary differential, but should also make clear that extra work and/or extra pay assignments should not constitute promotions.

There appears to be no good reason to require the superintendent to acknowledge a request for a promotion; if, however, such acknowledgement must be made, it should be nothing more than a simple form reply.

The superintendent should not be required to maintain a continuous file nor be required to constantly review old applications until such applications are withdrawn. A new application should be required for each vacancy.

It should be stated definitely and clearly that it is the function of the superintendent to determine the qualifications required for any promotion.

Paragraph B.: The administration must retain the right to change, modify or add to the qualifications necessary for any positions and must be free to exercise this right as necessary. There also should be no requirement to notify the union in advance, or otherwise, as to any changes with respect to the qualifications for various positions in the district. The sample clause would make a disagreement "over the necessity of such changes" subject to the grievance procedure. The effects of this might be devastating on the ability of a school board to provide competent management to the school system.

The last sentence in B. allows no flexibility to the board in emergency situations.

Option (a) and option (b) both are attempts to negotiate the criteria for promotion, a non-required subject. Seniority or length of service fits the definition of a criterion.

Option (b) is an attempt to dilute the authority of the superintendent in making appointments. It does not appear wise that agreement be made giving to an individual committee the right of approval of individuals for promotion.

d. Selection for a vacancy shall be made from among the three (3) top ranking applicants by the superintendent with the approval of the interviewing committee.

3. Appointments shall be made not later than sixty (60) days after the notice is posted in the schools or the giving of notification to the interested teachers. Announcements of appointments shall be made by posting a list in the office of the central administration and in each school building, and a list shall be given to the Association indicating which positions have been filled and by whom.

Article XVII, *Accredited Evening High School — Summer School — Home Teaching and Federal Programs*

A. Posting

All openings for positions in the accredited evening high school, summer school, home teaching, federal projects, and other programs (including non-teaching positions for which teachers may be qualified and eligible) shall be publicized by the superintendent in accordance with the procedure for publicizing promotional vacancies set forth in ARTICLE XVI, Sections A and B of this Agreement. Summer school and accredited evening high school openings shall be publicized not later than the preceding March 1 and June 1 respectively and teachers shall be notified of the action taken not later than May 1 and September 1, respectively. Home teaching openings shall be posted as they occur.

B. Criteria

In filling such positions, consideration shall be given to a teacher's area of competence, major and/or minor field of study, quality of teaching performance, attendance record, and length of service in the School District. When all other factors are substantially equal, preference shall be given first to teachers who have taught the subject area and/or grade level in question during the regular school year and then to teachers who have taught the grade and/or subject in question on a regular basis at any time during the preceding ( ) years. Teachers employed in the School District shall have priority to such assignments before appointment to applicants from outside the district.

C. Salary

Salary schedules for positions included in this ARTICLE shall be negotiated under procedures outlined in ARTICLE II of this Agreement along with regular salary schedules wherever possible, or at such other times as may be appropriate in order to conform to the time requirements for the implementation of said programs.

D. Coverage by Master Agreement

All of the provisions of this Agreement shall apply to teachers holding positions in the accredited evening high school, summer school, home teaching and/or under federal programs, except where clearly inapplicable.

Article XVIII, *Teacher Evaluation*

A. Evaluation Committee

1. Membership

No later than September 15, 19 , the Board and the Association agree to establish an Evaluation Committee consisting of ( ) members, ( ) members appointed by the Board, and ( ) members appointed by the Association.

2. Responsibility

This Committee shall develop specific criteria and recommend additional procedures for the evaluation of teachers.

3. Report date

The recommended criteria and procedures shall be submitted for adoption to the Board and the Association no later than December 15, 19 , and shall become an addendum to this Agreement.

B. Nontenure Teachers

1. Frequency

Nontenure teachers shall be evaluated by their immediate superiors at least ( ) times in each school year, to be followed in each instance by a written evaluation report and by a conference between the teacher and his immediate superior for the purpose of identifying any deficiencies, extending assistance for their correction and improving instruction. Such evaluation in each instance shall consist of at least ( ) in-classroom observations of at least ( ) minutes, each occurring on separate days and any other criteria for evaluation recommended by the Evaluation Committee established in Section A of this ARTICLE and approved by the Board and Association.

Does paragraph A. imply that it is the intention of the union to treat appointment to these vacancies as a promotion? As an assignment?

Evening school, summer school, home teaching and federal program positions should not be included in the negotiating unit inasmuch as they are temporary in nature.

C. and D. While the board may agree in the contract to notify current staff members of vacancies in these programs, it may not desire to have the terms and conditions of employment of these classifications set in the agreement.

It is the responsibility of the board and the administration to establish the basis for teacher evaluations. In the event that a teacher believes that either has acted improperly or unfairly with respect to the use of such teacher evaluation, the individual teacher has the opportunity to avail himself of those procedures and rights established in Title 18A in connection with tenure. The format of the evaluation form and the individuals who are to do them are areas in which the board and the administration must make, and have the right to make, unilateral decision.

PERC has held the procedure for evaluation to be mandatorily negotiable (See Scope of Negotiations, earlier.) but not the criteria used in evaluation. Procedure means when do we evaluate, who evaluates, does the teacher have the right to see evaluation? Since Chapter 132 now covers

2. Review

Violations of or disagreements over any of the provisions of this ARTICLE in cases involving nonrenewal of contract or termination of employment of nontenure teachers shall be subject to review under the Fair Dismissal Procedure established in ARTICLE XIX of this Agreement and shall be considered grounds for reinstatement without loss of pay or any other benefit provided by this Agreement.

C. General Criteria

1. Open evaluation

All monitoring or observation of the work performance of a teacher shall be conducted openly and with full knowledge of the teacher. The use of eavesdropping, public address, cameras, audio systems, and similar surveillance devices shall be strictly prohibited.

2. Evaluation by certificated supervisors

Teachers shall be evaluated only by persons certificated by the New Jersey State Board of Examiners to supervise instruction.

3. Copies of evaluation

A teacher shall be given a copy of any class visit or evaluation report prepared by his evaluators at least one (1) day before any conference to discuss it. No such report shall be submitted to the central office, placed in the teacher's file or otherwise acted upon without prior conference with the teacher. No teacher shall be required to sign a blank or incomplete evaluation form.

4. Standardized tests

Results of standardized tests used for evaluating students shall not be used to evaluate teacher performance.

D. Evaluation Procedure

1. Communication

Prior to any evaluation report the immediate superior of a teacher shall have had appropriate communication, including but not limited to all steps in paragraph 2 below and the provisions of ARTICLE XXVIII, Section B of this Agreement with said teacher regarding his performance as a teacher.

2. Reports

Evaluation reports shall be presented to each teacher by his immediate superior in accordance with the following procedures:

a. Such reports shall be issued in the name of the immediate superior based on a compilation of reports and observations by any or all supervisory personnel who come into contact with the teacher in a supervisory capacity.

b. Such reports shall be addressed to the teacher.

c. Such reports shall be written in narrative form and shall include, when pertinent:

(1) Strengths of the teacher as evidenced during the period since the previous report.

(2) Weaknesses of the teacher as evidenced during the period since the previous report.

(3) Specific suggestions as to measures which the teacher might take to improve his performance in each of the areas wherein weaknesses have been indicated.

E. Personnel Records

1. File

A teacher shall have the right, upon request, to review the contents of his personnel file and to receive copies at Board expense of any documents contained therein. A teacher shall be entitled to have representative(s) of the Association accompany him during such review. At least once every ( ) years, a teacher shall have the right to indicate those documents and/or other materials in his file which he believes to be obsolete or otherwise inappropriate to retain. Said documents shall be reviewed by the superintendent or his designee and if, in fact, they are obsolete or otherwise inappropriate to retain, they shall be destroyed. Disputes over the retention of said documents may be processed through the grievance procedure, commencing at Level Two.

2. Derogatory material

No material derogatory to a teacher's conduct, service, character or personality shall be placed in his personnel file unless the teacher has had an opportunity to review the material. The teacher shall acknowledge that he has had the opportunity to review such material by affixing his signature to the copy to be filed with the express understanding that such signature in no way indicates agreement with the contents thereof. The teacher shall also have the right to submit a written answer to such material and his answer shall be reviewed by the superintendent or his designee and attached to the file copy.

3. No separate file

Although the Board agrees to protect the confidentiality of personal references, academic credentials and other similar documents, it shall not establish any separate personnel file which is not available for the teacher's inspection.

F. Termination of employment

Final evaluation of a teacher upon termination of his employment shall be concluded

non-tenured evaluation, many boards will feel the legal protections afforded non-tenured teachers are sufficient.

Criteria means on what basis do we make judgements concerning the teacher's competency? You will note that paragraph A.1. and A.2. assign the duty of setting teacher evaluation criteria. A.3. may require the board to adopt any criteria developed by the committee. The board has the duty to evaluate teachers. A committee of teachers is not accountable to the public.

B.1. Remember that if you agree to a frequency for evaluation and it is covered by an arbitration clause, then the failure to evaluate even once could result in an order to reinstate an otherwise-admittedly unacceptable teacher. Don't agree to evaluate 5 times, if there is no way you can actually evaluate 5 times.

C.4. prohibits use of standardized testing to measure teacher competency. Testing may, in your opinion, provide a valuable guideline to teacher competency.

In addition, the T & E law does highlight pupil progress as a measure of educational success. Although the debate over standardized testing as a measure of pupil progress continues, the board might hesitate to completely deprive itself of the ability to utilize standardized testing.

Paragraph E., clause 1: To make disputes over whether or not materials included in the personnel file shall be expunged subject to the grievance process seems unwise. Since teachers generally have the ability to rebut materials contained in the file there seems little reason to become involved in controversy concerning expungement.

prior to severance and no documents and/or other material shall be placed in the personnel file of such teacher after severance or otherwise than in accordance with the procedure set forth in this ARTICLE.

Article XIX, *Fair Dismissal Procedure*

A. Fair Dismissal Committee

1. Membership

No later than September 15, 19 , the Board and the Association agree to establish a Fair Dismissal Committee consisting of ( ) members, ( ) members appointed by the Board and ( ) members appointed by the Association.

2. Responsibility

This Committee shall develop specific criteria which shall be used for nonrenewal of contract or termination of employment for nontenure teachers.

3. Report date

The recommended criteria shall be submitted for adoption to the Board and the Association no later than December 15, 19 , and shall become an addendum to this Agreement.

4. Distribution to nontenure teachers

The Board shall provide said criteria to all presently employed nontenure teachers, as soon as possible after adoption.

In 1975, the Legislature enacted a statute and the State Board of Education enacted rules more specifically enforcing the rights of nontenured teachers set forth in the Donaldson case.

It is important to note that Chapter 132 does not alter the basic relationship between a board and its nontenured teachers. The nature of a nontenured teacher's contract of employment with a school board is one for personal services with a commencement and a terminating date. When the terminal date has been reached, the contract is discharged and there are no longer any rights, duties, or obligations chargeable to either party to the previous agreement. In short, no relationship binding in law exists between the parties, and so it has been held in several instances by the Courts of the State of New Jersey.

A.1. and 2. As with evaluation, it would seem unwise for a board to waive its current right to set the criteria for dismissal of non-tenured teachers. These clauses do that. They also establish the bases for appeal to an arbitrator. The non-tenured teacher is presently in a probationary status not unlike that employed in labor contracts in private enterprise. The reason for a probationary period is to allow the employer (the board) to make determinations with respect to the teacher's competency. Fair dismissal clauses attempt to impose upon the employer a very much lower standard of competence than it might otherwise employ. Today, the district, faced with the possibility of guaranteeing a teacher a lifetime job, may decide to maintain a superior system, not simply an adequate one. Negotiated criteria subject to arbitration will strip the board of its power to seek a superior system.

Criteria are not required subjects of negotiations.

B. Notification of Status

1. Date

On or before April 30 of each year, the Board shall give to each nontenure teacher continuously employed since the preceding September 30 either:

a. A written offer of a contract for employment for the next succeeding year providing for at least the same terms and conditions of employment but with such increases in salary and benefits as may be required by law or agreement between the Board and the Association, or

b. A written notice that such employment shall not be offered.

2. Reasons

Any nontenure teacher who receives a notice of nonemployment may within five (5) days thereafter, in writing, request a statement of reasons for such nonemployment from the superintendent, which statement shall be given to the teacher in writing within five (5) days after receipt of such request.

3. Hearing

Any nontenure teacher who has received such notice of nonemployment and statement of reasons shall be entitled to a hearing before the Board, provided a written request for hearing is received in the office of the secretary of the Board within five (5) days after receipt by the teacher of the statement of reasons.

4. Board determination

The Board shall issue its written determination as to the employment or nonemployment of said nontenure teacher for the next succeeding school year within five (5) days after the completion of the hearing. Said proceedings shall be completed and the Board's determination presented to the teacher no later than May 31.

5. Appeal to grievance procedure

If the teacher disagrees with the determination of the Board, he may submit the dispute through the grievance procedure as set forth in ARTICLE III of this Agreement, and said grievance shall commence at Level 3. In the event said grievance is submitted to arbitration, the arbitrator may restore the teacher to continued employment and may restore any loss of pay and/or benefits retroactively to which the teacher would be entitled under the terms and conditions of employment required by law or this Agreement between the Board and the Association.

C. Failure to Comply

Should the Board fail to give a nontenure teacher either an offer of contract for employment for the next succeeding year or a notice that such employment shall not be offered and upon request by the teacher to the superintendent, a statement of reasons and a hearing, and in the event of such hearing shall fail to make and serve a copy of the determination, all within the time and in the manner provided by this ARTICLE, the Board shall be deemed to have offered to that teacher continued employment for the next succeeding school year upon the terms and conditions of employment as may be required by law or agreement between the Board and the Association.

D. Notification of Intention to Return

If the teacher desires to accept such employment, he shall notify the Board of such acceptance, in writing, on or before June 1, in which event such employment shall continue as provided for herein. In default of such notice the Board shall not be required to continue the employment of the teacher.

E. Termination of Employment'

Any nontenure teacher who receives a notice that his employment shall be terminated shall be entitled to a statement of reasons and a hearing as provided for in paragraphs 2, 3, 4, and 5 of this Section except that a determination of the Board shall be made and served thirty (30) days before the expiration of the notice period provided for in said contract. Should the Board fail to comply therewith, then said notice of termination shall be invalid and of no force and effect and the employment of the teacher shall continue as if such notice had not been given.

B.1. is a restatement of law and unnecessary.

B.2. is a paraphrase of law and changes the board's legal obligations. 18A:27-3.2 requires that the board supply a written statement of reasons within thirty days, not the five listed in this sample clause. For some reason, this clause again attempts to decrease teachers' statutory rights to request reasons from the present fifteen days to five.

B.3. The Administrative Code very specifically requires an informal appearance, not a hearing. It is not to be an adversary proceeding; it should be of reasonable length; the teacher may be represented by one person or counsel; witnesses may be presented with no cross-examination; appearances shall be in private.

B.4. The Administrative Code supporting the non-tenure evaluation law requires that the board's written determination be issued within three days of the informal appearance, not the five days listed in this clause.

Additionally, there is no requirement that a written decision issue prior to May 31st. Assume that notice not to reemploy was given on April 30th. The statement of reasons is requested on May 15th. The reasons are given on June 14th. On June 24th (the ten day period set forth in Administrative Code), the affected teacher seeks an appearance which is held on July 24th, with a written determination issued on July 27th. Of course, most boards will proceed more quickly than this but if both parties exhausted each time limit, there would be no way to finish the process before late July.

B.5. submits the determination to an arbitrator.

C. imposes remedies on the board which the Commissioner probably would not impose in the same circumstances.

Article XX, ***Complaint Procedure***

A. Procedural Requirement

Any complaints regarding a teacher made to any member of the administration by any parent, student, or other person which does or may influence evaluation of a teacher shall be processed according to the procedure outlined below.

The essence of this article deals with a complaint lodged against a teacher, generally from an outside non-administrative source for which the teacher grieves for relief and remedy against a potential damaging

B. Meeting with Principal or Immediate Superior

The principal or immediate superior shall meet with the teacher to apprise the teacher of the full nature of the complaint and they shall attempt to resolve the matter informally.

C. Right to Representation

The teacher shall have the right to be represented by the Association at any meetings or conferences regarding such complaint.

D. Procedure

Step 1.

In the event a complaint is unresolved to the satisfaction of all parties, the teacher may request a conference with the complainant to attempt to resolve the complaint. If the complaint is unresolved as a result of such conference or if no mutually acceptable conference can be agreed on, the complaint shall move to Step 2.

Step 2.

Any complaint unresolved under Step One at the request of the teacher or the complainant shall be reviewed by the building principal or counterpart supervisor in an attempt to resolve the matter to the satisfaction of all parties concerned.

Step 3.

Any complaint unresolved at Step Two may be submitted in writing by the complainant or the teacher to the building principal or counterpart supervisor who shall forthwith forward a copy to the superintendent or his designee and the complainant.

Step 4.

Upon receipt of the written complaint the superintendent or his designee shall confer with all parties. The teacher shall have the right to be present at all meetings of the superintendent or his designee and the complainant.

Step 5.

If the superintendent or his designee is unable to resolve a complaint to the satisfaction of all parties concerned, at the request of the complainant or the teacher he shall forward the results of his investigation along with his recommendation, in writing, to the Board and a copy to all parties concerned.

Step 6.

After receipt of the findings and recommendations of the superintendent or his designee, and before action thereon, the Board shall afford the parties the opportunity to meet with the Board and show cause why the recommendations of the superintendent or his designee should not be followed. Copies of the action taken by the Board shall be forwarded to all parties.

Step 7.

Any complaint unresolved under Step 6, may be submitted by the teacher to the grievance procedure as set forth in ARTICLE III of this Agreement and shall commence at Level 3.

influence which such complaint may have against the teacher's evaluation report.

Very few boards have any form of complaint procedure in their agreement.

It would appear that Paragraph A., B. and C. of this article should alone suffice to ensure fair and equitable treatment to any complaint so lodged against a teacher.

Because actions of the board, including withholding of an increment or denial of tenure are reviewable, it should not be necessary to make disputes on these matters arbitrable. Who are the parties? the student? the parent? a community group?

Be wary of general, undefined phrases and words such as "adequate," "appropriately furnished," and "sufficient."

Concessions in these areas should gain concessions.

Article XXI, *Teacher Facilities*

A. Listing of Facilities

By the beginning of the 19 - school year, each school shall have the following facilities:

1. All rooms which are used for purposes of instruction during any portion of the months of May, June, July, August, September, and October shall be air conditioned;
2. Space for each teacher within each instructional area in which he teaches to store his instructional materials and supplies;
3. An air-conditioned teacher work area containing adequate equipment and supplies to aid in the preparation of instructional materials;
4. An appropriately furnished and air-conditioned room which shall be reserved for the exclusive use of teachers as a faculty lounge. Although teachers shall be expected to exercise reasonable care in maintaining the appearance and cleanliness of said lounge, it shall be regularly cleaned by the school's custodial staff.
5. A private pay telephone in each faculty lounge for the exclusive use of teachers;
6. A serviceable desk, chair, and filing cabinet for the exclusive use of each teacher;
7. A communication system so that teachers can communicate with the main building office from their classrooms;
8. Well-lighted and clean teacher rest rooms, separate for each sex and separate from the student's rest rooms;
9. A separate, private dining area for the exclusive use of the teachers;
10. Free and adequate off-street paved parking facilities, which are protected against vandalism, properly maintained, and identified exclusively for teacher use;
11. Suitable, private closet space with lock and key for each teacher to store coats, overshoes, and personal articles;
12. Copies, exclusively for each teacher's use, of all texts used in each of the courses he is to teach;
13. Adequate chalkboard space in every classroom;
14. A complete and unabridged dictionary in every classroom;
15. Adequate books, paper, pencils, pens, chalk, erasers and other such material required in daily teaching responsibility.

All of the items demanded in paragraph A. must be questioned in light of the existing facilities in the district to determine the extent of change or if, indeed, change is at all possible or necessary.

Any item involving the building or improvement or the use of space within the building should hinge first upon the requirements for classrooms. The board should reject such specific agreement as requested. Paragraph B. must be considered strictly as a cost item.

Paragraph C. again presents a question concerning the allocation of space in specific schools. It must be examined by the board in light of maintenance of flexibility with respect to the utilization of space, now and in the future.

The request to have vending machines in the teachers' lounges and lunchroom areas would, on its face, appear to present no difficulty.

B. Special Clothing
By the beginning of the 19 - school year, the Board shall provide gym uniforms for physical education teachers, smocks for art and home economics teachers, laboratory coats for laboratory science teachers, shop coats for vocational and industrial arts teachers. Proper laundering service for all of said items shall be provided without charge to the teacher.

C. Work Room and Office
By the beginning of the 19 - school year, an appropriate room and other facilities for teachers who work in more than one school building shall be assigned to them in each school in which they work to permit the effective discharge of their responsibilities to their pupils. Such teachers shall also be assigned a single classroom or office for their exclusive use outside of regular teaching hours, with a desk or other equivalent facility and a place to store materials and supplies for their personal use.

D. Answering Service
The Board agrees to provide an answering service between p.m. and a.m. for teachers to report unavailability for work. Once a teacher has reported unavailability, it shall be the responsibility of the administration to arrange for a substitute.

E. Vending Machines
Upon the request of the Association, vending machines shall be installed in the teachers' lounge and teachers' lunchroom areas. The proceeds from all such machines shall be placed in a student scholarship fund created for that purpose. Awarding of scholarships shall be administered jointly by the Association and the superintendent. The Teacher-Administration Liaison Committee in each building established according to the provisions of ARTICLE XXII of this Agreement shall develop mutually acceptable procedures for servicing said machines and accounting for the funds.

F. Keys
In order to permit freedom of access both during and after regular school hours, all teachers shall be given keys to the faculty lounge, teacher work area, and interior hallway gates of their base school, and, upon request, and subject to reasonable regulation, shall be provided with a key or other means of access to an outside door in their area of the building during nonschool hours.

G. Student Transportation
By the beginning of the 19 - school year, the Board shall provide a vehicle and a driver for the transportation of individual students or small groups of students. Said vehicle and driver shall be used to transport sick students from school to home during the course of the school day.

However, the board should not be required to accept any responsibility whatsoever for these vending machines and it should be clearly stated that the union assumes clear and full responsibility.

Paragraph F. presents essentially a security problem with respect to the distribution of keys, and therefore, it must be so examined.

It is difficult to relate Paragraph G. to "terms and conditions of employment" and, therefore, should not be considered in negotiations.

Article XXII, *Teacher-Administration Liaison*

A. Building Level Faculty Council

1. Organization
The Association shall select a Faculty Council for each school building which shall meet with the principal at least once a month during the school day for the duration of the school year. Said Council shall consist of not more than one (1) member for every ( ) teachers in the school building, but shall in no event have less than ( ) members.

2. Areas for Faculty Council consideration
Areas for consideration by the Council shall include but not be limited to school building level decisions regarding:

a. Administration of this Agreement;
b. Facilitation of programs and recommendations of the Instructional Council hereafter established in ARTICLE XXIII of this Agreement;
c. Revision and development of building policies and practices.

B. Meetings with Superintendent
The Association's representatives shall meet with the superintendent at least once a month during the school year to review and discuss current school problems and practices and the administration of this Agreement

Article XXII establishes a committee which would deal with administrative policy and practice.

The use of a consultative plan in which the board and the administration would utilize the expertise of the teachers in connection with various questions, problems and policies would be a distinct advantage to the school system. However, any such plan should be only advisory in nature, or it is no longer consultation, but negotiations. With respect to the proposals contained in Article XXII, if the intention of the association is to enlarge the area of contract negotiations, these articles should be rejected.

Article XXIII, *Instructional Council*

A. Organization

1. Purpose
An Instructional Council shall be established and shall meet not later than
19 . The purpose of the Council shall be to strengthen the education program through recommendations, research, implementation, and evaluation by the superintendent and the Association to best meet the needs of the students, the schools, and the community. The Council may consider, but not be limited to, advising the Board and the Association on such matters as curriculum improvements, teaching techniques, instructional organ-

Again, board consultation with professionals on policy matters is an estimable goal. However, the board should avoid giving even the appearance of negotiating those policies. Is there anything a school district does which is not contained in A.1? Notice that A.1. makes the izational patterns, experimentation, extra curricular programs, in-service training and staff development, pupil testing and evaluation, philosophy and educational goals of the district, teacher recruitment, research, educational specifications for buildings, and other related matters regarding the effective operation of the School District.

2. Membership
The Council shall consist of ( ) representatives appointed by the superintendent and ( ) representatives appointed by the Association.

3. Committees
The Council shall be authorized to establish sub-committees or ad hoc committees for specific projects to allow for those who would be affected by Council recommendations to have an opportunity to be involved.

4. Individual initiative for suggestions
The Council shall encourage the initiation of ideas and suggestions for projects by individual teachers, departments, grade levels, Association committees, administrators, Board members, students, parents, or other interested parties.

5. Additional members
Nothing in this ARTICLE shall be interpreted to prevent the Council from consulting or appointing to its committees such additional teachers, administrators, professional advisors, students, parents, or other persons as the original members herein designated shall determine are desirable and appropriate for said purposes. In the event that professional consultants are added, the Board agrees to provide adequate funds to pay for each such service.

6. Rules of procedure
The Council shall establish its own rules of procedure and shall provide for a rotating chairman who shall be responsible for the arrangement and conduct of meetings.

7. Meetings
The Council shall meet at least once each month.

8. Information
The Council and its sub-committees shall be provided with the same access to available school district information as provided to the Association as specified in ARTICLE V, Section A of this Agreement.

B. Reports

1. Board and Association action
The Board and the Association shall consider and study all written recommendations submitted by the Council for action. If the Board or the Association refuses to adopt any such recommendations, it shall state the specific reasons for such refusal in writing to the Council.

2. Minority reports
Reports of the Council or any sub-committee established by the Council may include minority as well as majority views.

C. Budget
As of September 1, 19 , the Board shall provide ($) dollars to the Instructional Council for the purpose of assisting said Council in establishing effective procedures for decision-making in implementing the responsibilities stated above in the School District.

D. Teacher Participation

1. Pay
Teachers who serve on the Instructional Council or any sub-committee organized by it beyond the regularly scheduled in-school day or in-school year shall be paid at the rate specified in ARTICLE VII, Section A, paragraph 4 of this Agreement.

2. Released time
In addition to whatever unassigned time they may be entitled to under the terms of this Agreement, teachers who are members of the Instructional Council or any of its sub-committees shall be provided with released time at the following rate for the purpose of working on any of the projects defined above:

a. Elementary Schools – ( ) periods per day
b. Junior High Schools – ( ) periods per day
c. Senior High Schools – ( ) periods per day
d. Other – ( ) periods per day

E. Clerical Assistance
Adequate secretarial and clerical assistance shall be provided for the Council.

Article XXIV, *Sick Leave*

A. Accumulative
As of September 1, 19 , all teachers employed shall be entitled to ( ) sick leave days each school year as of the first official day of said school year whether or not they report for duty on that day. Unused sick leave days shall be accumulated from year to year with no maximum limit.

Association the equal recipient of council advice, thus creating the misleading impression that the Association has some responsibility for educational policy.

Very clearly, the Instructional Council is a prelude to attempted union control of educational policy-making. The next step would be grievance arbitration over disputes on policy. Policy-making in a democratic society is invested with the peoples' representatives. Unions have no public responsibility.

In addition, the new T & E obligations of boards require broad participation of teaching staff members and the community. No contractual agreement should limit that participation. Article XXIII may very well do that.

The amount of sick leave granted beyond ten days a year is purely a matter of economic ability and educational need. Any concession in this area should achieve an equivalent

B. Transfer from Other Districts

As of September 1, 19 , whenever the Board employs a teacher who has an unused accumulation of sick leave days from another school district in New Jersey, the Board shall grant additional sick leave credit in addition to the annual and accumulated sick leave provided in Section A of this ARTICLE as follows:

1. For the first year of employment in the School District a minimum of ( ) days or such lesser amount as may have been accumulated in the former district.
2. For each subsequent year of employment in the School District an additional ( ) days until all of the days accumulated in the former district have been credited.
3. The accumulation of sick leave days from another district shall be credited in accordance with the procedure outlined above after certification from the prior employing school district. The days of sick leave so credited may be used immediately or if not so used shall be accumulative for additional leave thereafter as may be needed.
4. The aforementioned sick leave credit shall be given to any presently employed teacher under the provisions described above.

C. Nonaccumulative

Nonaccumulative additional sick leave benefits shall be allowed to teachers according to the following schedule:

(Local Association option on type of additional nonaccumulative sick leave to be submitted.)

D. Summer School

As of September 1, 19 , teachers employed in the summer school program shall be granted ( ) nonaccumulative sick leave days.

E. Notification of Accumulation

Teachers shall be given a written accounting of accumulated sick leave days no later than September of each school year.

F. Retirement

Upon retirement, the retiring teacher shall be compensated for his or her accumulated sick leave at the rate of pay at the time of retirement.

Article XXV, *Temporary Leaves of Absence*

A. Types of Leave

As of the beginning of the 19 - school year, teachers shall be entitled to the following temporary nonaccumulative leaves of absence with full pay each school year:

1. Personal

( ) days leave of absence for personal, legal, business, household or family matters which require absence during school hours. Application to the teacher's principal or other immediate superior for personal leave shall be made at least ( ) day(s) before taking such leave (except in the case of emergencies) and the applicant for such leave shall not be required to state the reason for taking such leave other than that he is taking it under this Section.

2. Religious

Up to ( ) days per school year for observance of religious holidays, where said observance prevents the teacher from working on said days.

3. School visitation

Up to ( ) days for the purpose of visiting other schools or attending meetings or conferences of an educational nature.

4. Community service leave

Any teacher who is a member of a community service organization or who is requested by any such organization to attend or participate in meetings or programs of the organization conducted during school hours shall be granted time off with pay for such purpose upon request.

5. Conferences of affiliates

Up to ( ) days for ( ) representatives of the Association to attend conferences and conventions of state and national affiliated organizations.

concession by the union.

P.E.R.C. has held, consistent with Commissioner's decisions that, under Chapter 303, automatic grants of sick leave beyond accumulated days were prohibited by 18A:30-6 and were an illegal subject. It is anticipated that an analysis of Chapter 123 would lead to the same result. Boards may negotiate sick leave time in excess of the statutory minimum provided the board retains the ability to and actually does make the decision to grant extended sick leave on a case-by-case basis and that no employee may increase his total accumulation by more than fifteen days in any year.

Accumulation of sick leave and transfer from other districts are not required by law. Unused sick leave accumulation might discourage the abuse of sick leave provisions. However, when combined with F. unlimited accumulation could be very costly to the district.

Paragraph D. covers summer school, an area that should not be covered by the contract.

Paragraph F.'s requirement that the board pay for unused sick leave at the current rate of pay for a retiring teacher does not seem warranted. This clause is particularly dangerous because it is almost impossible to compute its eventual cost.

Paragraph A.1., Personal Leave: The board may desire to require advance approval and a statement of reason. Paragraph A.2. through 9. are economic and educational necessity items. Concessions on any or all of them should achieve union concessions. Again, boards may desire to require advance approval. 4. and 6. are potentially costly beyond reason. 6. at the very least should not include legal appearances by a teacher flowing out of discipline or discharge unless the decision of the board is reversed by the Commissioner.

6. Legal
Time necessary for appearances in any legal proceeding connected with the teacher's employment or with the school system or in any other legal proceeding if the teacher is required by law to attend.

7. Death
Up to ( ) days at any one time in the event of death or serious illness of a teacher's spouse, child, son-in-law, daughter-in-law, parent, father-in-law, mother-in-law, brother, sister, brother-in-law, sister-in-law, and any other member of the immediate household. Teachers shall be granted up to ( ) days in the event of death of a teacher's friend or relative outside the teacher's immediate family as defined above. In the event of the death of a teacher or student in the School District, the principal or immediate superior of said teacher or student shall grant to an appropriate number of teachers sufficient time off to attend the funeral.

8. Summer school
Up to a total of ( ) days at the end of a school year and/or at the beginning of a school year, as may be required to attend summer school classes and/or to travel to the place where such classes are to be held.

9. Marriage and honeymoon
Up to ( ) days for the purpose of marriage and honeymoon or up to ( ) days for the purpose of attending the marriage of a member of the immediate family.

10. Temporary Military
Time necessary for persons called into temporary active duty of any unit of the U. S. Reserves or the State National Guard. A teacher shall be paid his regular pay in addition to any pay which he receives from the state or federal government.

11. Good cause
Other leaves of absence with pay may be granted by the Board for good reason.

B. In Addition to Sick Leave
Leaves taken pursuant to Section A above shall be in addition to any sick leave to which the teacher is entitled.

C. NJEA Convention
Each teacher who attends the NJEA Convention shall fully be compensated for all costs incurred for travel, tolls, meals and hotel.

A., 11. can present serious difficulties especially to boards who have "past practice" or "savings clauses." The granting of additional leaves might establish an unwanted precedent. Unfortunately, a labor contract sometimes has the effect of limiting the ability of an employer to grant fringe benefits in excess of the contract simply because the employer's concern for employees in a given situation can require the employer to grant the same benefit in all similar cases.

C. First, Chapter 123 as noted earlier, prohibits an employer from assisting a union. The NJEA is a union. While no decision in this area has been issued, it is very possible that any agreement to this clause or any payment under it, is a violation of law.

Practically, paragraph C. is unacceptable even if legal. There is no limit on any expense incurred. The cost to the board could be enormous if only a portion of teachers sought reimbursement for their expenses. In these days of tight budgets, some even requiring the layoff of teachers, this doesn't seem to be in the best interests of anyone.

Article XXVI, *Extended Leaves of Absence*

A. Association
The Board agrees that up to ( ) teachers designated by the Association shall, upon request, be granted a leave of absence without pay for up to ( ) year(s) for the purpose of engaging in activities of the Association or its affiliates.

B. International and Federal Programs
A leave of absence without pay of up to ( ) years shall be granted to any teacher who joins the Peace Corps, VISTA, National Teachers Corps, or serves as an exchange teacher or overseas teacher, and is a full-time participant in either of such programs, or accepts a Fulbright Scholarship.

C. Outside Teaching
A teacher on tenure shall be granted a leave of absence without pay for up to ( ) years to teach in an accredited college or university, private school or other public school district.

D. Military
Military leave without pay shall be granted to any teacher who is inducted or enlists in any branch of the armed forces of the United States for the period of said service and three (3) months thereafter, or three (3) months after recovery of any wound or sickness at time of discharge. A similar leave shall be granted to the spouse of any teacher who is so inducted or who enlists to join him for the period of special training in preparation for duty overseas in combat zones.

E. Maternity

1. Natural Birth
The Board shall grant maternity leave without pay to any teacher upon request subject to the following stipulations and limitations:

(a) Maternity leave shall commence and terminate, on the date requested by the teacher.

In consideration of the extended leaves of absence demanded in Article XXVI, it should be noted that most of these leaves are for periods of time without pay. The board must bear in mind that future demands in this area will probably be for a certain percentage of pay for these leaves. Thus, while such leaves might not appear to be a cost item at this time, they might become so in the future.

The granting of any of the leaves in this area, other than sick leave, should be upon application to the superintendent for approval unless the board specifically provides otherwise.

The maternity leave clause often poses problems for the board. On March 23, 1973, the New Jersey Division of Civil Rights entered an order dealing with maternity leave policies of boards of education. This order was entered in the case of Miller v. **Pequannock Township Board of**

(b) Any teacher granted maternity leave without pay according to the provisions of this section may at her discretion elect to substitute all or any part of her accumulated sick leave in lieu thereof and receive full pay and benefits for the same.

(c) Any teacher granted maternity leave shall at her request be restored to the exact same teaching position, subject area, and grade level vacated at the commencement of said leave.

(d) No teacher shall be prevented from returning to work after childbirth solely on the ground that there has not been a time lapse between childbirth and the desired date of return.

(e) The Board shall not remove any teacher from her duties during pregnancy unless the teacher cannot produce a certificate from her physician that she is medically able to continue teaching.

(f) The Board shall not discriminate against any person in violation of N.J.S.A. 10:5-1 et. seq., The Law Against Discrimination, nor in violation of the Constitutions of the State of New Jersey and of the United States.

2. Any teacher who does not elect to take a maternity leave may continue to perform her duties as long as physically able to do so and will be entitled to return to her duties when her physician certifies that she is physically able to do so. The period of such absence will be deemed the same as for any other physical disability and she will be entitled to her annual and accumulated sick leave with pay during the period of absence.

2. Adoption

Any female teacher adopting an infant child shall receive similar leave which shall commence upon her receiving *de facto* custody of said infant, or earlier if necessary to fulfill the requirements for the adoption. No teacher on maternity leave shall, on the basis of said leave, be denied the opportunity to substitute in the School District in the area of her certification or competence.

F. Illness in Family

A leave of absence without pay of up to ( ) year(s) shall be granted for the purpose of caring for a sick member of the teacher's immediate family. Additional leave may be granted at the discretion of the Board.

G. Political

The Board shall grant a leave of absence without pay to any teacher to campaign for or serve in a public office, or to campaign for a candidate for a public office other than himself.

H. Good Cause

Other leaves of absence without pay may be granted by the Board for good reason.

I. Return from Leave

1. Salary

Upon return from leave granted pursuant to this ARTICLE, a teacher shall be considered as if he were actively employed by the Board during the leave and shall be placed on the salary schedule at the level he would have achieved if he had not been absent.

2. Benefits

All benefits to which a teacher was entitled at the time his leave of absence commenced, including unused accumulated sick leave and credits toward sabbatical eligibility, shall be restored to him upon his return, and he shall be assigned to the same position which he held at the time said leave commenced, if available or, if not, to a substantially equivalent position.

J. Extension and Renewals

All extensions or renewals of leaves shall be applied for and granted in writing.

Education. A brief summary of that order is as follows:

1. A board may not maintain any policy for removal of a teacher from her teaching duties based solely on the fact that she is pregnant. Nor may a board remove a teacher from her duties based solely on a specific number of months of pregnancy or a specific number of months after childbirth. Each teacher must be treated on an individual basis.

2. A board may remove a pregnant teacher from her teaching duties if her teaching performance substantially declines, if she becomes physically incapacitated, or for other just cause.

The board may require the teacher to produce a doctor's certificate indicating she is physically able to continue her duties. The board may require the teacher to undergo a physical by a doctor it appoints. If there is disagreement between doctors, a third neutral doctor appointed by a county medical society or by the two doctors themselves can issue a final, binding opinion.

3. A board must grant leaves of absence for medical reasons associated with pregnancy and birth on the same terms and conditions governing leaves of absence for other illness or medical disability.

4. A board need not grant or extend maternity leave for a nontenured teacher beyond the end of the contract school year in which the leave is obtained.

5. Terminal dates for maternity leaves, and reasonable requests for extensions or reductions in leave time, must be granted so long as they do not substantially interfere with the administration of the school and so long as they can be medically substantiated.

6. A teacher returning from pregnancy leave is entitled to all benefits to which teachers returning from other types of sick leave would be entitled.

Sample maternity leave language is available from your FSR or the Labor Relations Department.

Adoption cannot be treated the same as maternity since adoption

Article XXVII, *Sabbatical Leaves*

A. Purpose

A sabbatical leave shall be granted to a teacher by the Board for study, including study in another area of specialization, for travel, or for other reasons of value to the school system.

B. Conditions

Sabbatical leave shall be granted, subject to the following conditions:

1. Percentage of teachers

If there are sufficient qualified applicants, sabbatical leaves shall be granted to a mimimum of (%) percent of teachers at any one time.

2. Requests

Requests for sabbatical leave must be received by the superintendent in writing in such form as may be mutually agreed on by the Association and the superintendent, no later than January 1, and action must be taken on all such requests no later than February 1, of the school year preceding the school year for which the sabbatical leave is requested.

3. Minimum time to qualify

The teacher has completed at least seven (7) full school years of service in the School District,

4. Pay

A teacher on sabbatical leave (either for one-half (½) of a school year or for a full school year) shall be paid by the Board at (%) percent of the salary rate which he would have received if he had remained on active duty if said leave is for study and at (%) percent if for travel or other reason.

5. Return

Upon return from sabbatical leave, a teacher shall be placed on the salary schedule at the level which he would have achieved had he remained actively employed in the system during the period of his absence and he shall be credited with all other benefits for which he would have entitled during the period of his leave and continuing thereafter upon his return.

does not involve illness or disability (hence sick leave is not applicable), and male or female teachers may adopt a child. The adoption proposal would seem to be discriminatory since it would apply only to female teachers.

Any time the board agrees to the phrase "immediate family" in the contract, it should be sure to clearly define who is included in that relationship.

7. The board is not required to grant any leave beyond the period of actual disability. Such leave (generally for child rearing purposes) may be provided as an optional benefit by the employer but, if provided at all, must be available to male and female employees on a non-discriminatory basis.

In times of economic difficulty, sabbatical leaves have been the first to be deleted. However, contract agreement can lock you into this benefit.

Negotiations of this poses four questions: The cost aspect of the particular leave; whether or not approval is necessary for the particular leave requested; upon what basis, to what position in the school district and on what point in the salary guide will a returning teacher be placed; and what scheduling difficulties will the granting of a particular leave present to the administration. Specific attention must be directed to the minimum number of days the law requires the board to grant sick leave and to the possibility of accumulation of the sick days, as again provided in the statutes. The board must also be careful of B.1. which provides that a certain minimum percentage of teachers shall be granted sabbatical leaves in each year. This does not place a maximum and it is conceivable that any number over the minimum could be qualified and therefore eligible as far as the language is concerned. The board can avoid this problem by stating that the number of sabbaticals granted is the maximum permitted in any one year.

Arbitrators have been resistant to a

Article XXVIII, *Professional Development and Educational Improvement*

A. Purpose

In our rapidly changing society teachers must constantly review curricular content, teaching methods and materials, educational philosophy and goals, social change and other topics related to education. The Board recognizes that it shares with its professional staff responsibility for the upgrading and updating of teacher performance and attitudes. The Board and the Association support the principle of continuing training of teachers and the improvement of instruction. The parties further agree that each teacher should fulfill the obligation for professional improvement in ways that best serve his own problems, functions, interests, and needs.

B. Assistance for Teachers

Within any one (1) week, a teacher who shall so request shall be granted at least thirty (30) minutes of counseling with his immediate superior. Such meetings shall be scheduled within the teacher work day and the teacher released from other duties therefor.

C. Programs

The Board agrees to implement the following at the beginning of the 19 - school year.

1. Pay and expenses for required training

To pay the full cost of tuition and other reasonable expenses incurred in connection with any courses, workshops, seminars, conferences, in-service training sessions, or other such sessions which a teacher is required and/or requested by the administration to take. Said teacher shall also be compensated for all time spent in actual attendance at said sessions beyond his regular working day and year at his regular rate as defined in ARTICLE VII, Section A, paragraph 4 of this Agreement.

2. Professional Development Committee for reimbursement

a. To establish a Professional Development Committee to act upon requests from teachers for authorization to attend courses, workshops, seminars, conferences, in-service training sessions or other such sessions. Within ( ) days after signing this Agreement, the superintendent and the president of the Association shall each appoint ( ) members to the Committee and they shall select a chairman from among themselves. The superintendent and the president of the Association may, from time to time, replace members appointed by them.

b. To pay the reasonable expenses (including fees, meals, lodging and/or transportation) incurred by teachers who attend such sessions with the approval of the Professional Development Committee.

3. In-service workshops, conferences, programs

a. The Board shall provide in-service professional improvement programs which shall be cooperatively planned in the instructional council to meet priorities jointly determined by the Association and the administration. In-service programs shall be conducted during the in-school teacher workday if teacher attendance is required. All programs conducted during the summer shall be voluntary and compensated at the rate set forth in ARTICLE VII, Section A, paragraph 4.

b. Teachers who participate in an in-service program shall be given credit for each program as provided in schedule D.

4. Professional library

To expend up to ($) dollars per teacher each school year to purchase books, equipment and/or other educational resource materials, as may be recommended by the aforementioned Professional Development Committee for use by the professional staff for professional development and educational improvement. The Board shall provide adequate space for housing said books and materials in convenient and readily accessible locations.

5. Recruitment

To establish a Recruitment Committee to study and improve teacher recruitment. This Committee shall develop ways to utilize incumbent teachers who agree to be recruiters. The superintendent and the president of the Association shall each appoint ( ) members to this Committee and they shall choose a chairman from among themselves. Teachers who participate as members of this Committee shall suffer no loss of compensation and shall be reimbursed for any travel and expenses incurred in the performance of their functions.

6. Summer program for professional development

To appropriate ($) dollars for a Voluntary Summer Program for Professional Development to afford teachers the opportunity to participate in activities which they propose and which shall contribute to the professional development of the participating teacher and to the educational advantage of the children served by the District. Participation in this program shall take place for a period of not more than one (1) month during July and/or August and participants shall be remunerated on a prorated basis, according to their monthly salary for the school year beginning July 1 of the summer employed.

board claim of insufficient funds as a reason to deny the granting of a sabbatical leave.

The question of the board agreeing to make certain payments in connection with this article would be an appropriate subject for collective negotiations under the law. However, the proposal as embodied in the demand in the article would impose certain points that should be outside the context of negotiations.

The approval of granting of these monies would be made by a panel of teachers over which the superintendent and administration would have no control. Thus, the critical aspect of control of the funds to be expended would rest neither with the board nor with its representatives. It would seem that if the board were to agree to this type of payment it should be specified that it is the superintendent who will make decisions as to the necessary approvals.

Paragraph A. is unnecessary.

Paragraph B. provides for further reduction in the time a teacher might spend with students. Certainly such time can be found, without contract language, during preparation periods or, for elementary teachers, immediately after school. As professionals in other areas regularly expect to devote additional time to their profession beyond an eight hour day so should teachers.

There is normally no need for the establishment of a committee as defined in C.2.

C.3.a. and b. These clauses give control over in-service programs essentially to the union. The clauses also compensate professionals for activities they should be expected to participate in with no additional compensation.

C.4. may not be a required subject of negotiations.

a. Teachers may apply for this program no later than . Applications shall be submitted to a Screening Committee consisting of ( ) members selected by the superintendent and ( ) members selected by the Association. The Committee shall receive, review, and approve or disapprove applications. All applicants shall be notified no later than May 1 of each year as to whether their applications have been approved.

b. The funds appropriated for this program shall be used to finance projects evaluated by the Screening Committee as fulfilling the objectives of the program.

c. The Screening Committee shall establish its own rules of procedure.

7. Innovative grants

To appropriate ($) dollars to establish a grant program to make funds available to teachers interested in designing and implementing innovative educational ideas and techniques.

a. The aim and purpose of this Section shall be to encourage creative and innovative teachers to experiment in order to better meet the educational needs of the students of the School District.

b. An Innovative Review Committee consisting of ( ) members appointed by the superintendent and ( ) members appointed by the Association shall be established no later than October 1, 19 . Said Committee shall receive, review, and approve or disapprove applications for grants. Applications for grants shall be submitted no later than and awards shall be announced no later than

c. No individual grant under the terms of this Section shall exceed ($) dollars.

d. The Innovative Review Committee shall establish its own rules of procedure.

8. Experimentation

a. The Association and the Board have a mutual responsibility to promote better instruction. The Board welcomes Association participation in all aspects of strengthening the education program to best meet the needs of the students, the schools, and the community.

b. The Association may participate in any aspect of an experimental or other project or program. Such participation shall include, but not be limited to, all phases of proposals, inquiry, study, research, deliberations, recommendations, implementation, evaluation, and adoption. Any aspect of an experimental program which would affect the terms and conditions of teacher employment shall be negotiated with the Association before implementation.

C.8.a. is a general goal statement and should be rejected.

C.8.b. should be read carefully. The implications of this clause are obvious. With respect to any committee set up, whether or not under contract, boards might consider if the union represents all the teachers. The reliance solely on the union for committee membership and input could isolate the administration and the board from important numbers of teachers.

The new T & E obligations of boards require broad participation of teaching staff members and the community. No contractual agreement should limit that participation.

4. through 8. are almost never contained in contracts.

Article XXIX, *Supervision of Student Teachers*

A. Mutual Responsibility

There is a continuing need for the recruitment of able teacher candidates and for the improvement of their preparation. Teachers enlisted to teach in any situation must be provided an education based on the best academic preparation supplemented with numerous planned experiences which can provide a working understanding of the students and classroom with which teachers must function effectively. Through the cooperation of the School District and the Association, the student teacher is provided with the setting to apply the professional knowledge and skills, theories, and philosophies which have been developed through college courses and related experiences. The Board and the Association accept the joint responsibility to prepare teachers and to provide student teachers with direct field experiences in the School District that are relevant to the teaching act.

B. Procedures

The following procedures shall govern the supervision of student teachers:

1. Teaching experience

No teacher shall have a student teacher under his supervision unless said teacher has had at least three years of teaching experience, with the most recent year in his present position.

2. Voluntary participation

Supervision by a teacher of a student teacher shall be voluntary. Each teacher shall be

Consultation in the area of student teacher supervision seems desirable. Control of that program either by individual teacher or by the union does not. Almost no district in the State has negotiated on this topic.

polled prior to any school year for willingness to participate in the student teaching program, but this shall not be construed as acceptance of any particular student teaching assignment.

3. Academic record of student teachers

Prior to the assignment of student teachers, the superintendent shall request each prospective student teacher to provide prospective cooperating teachers a transcript of college courses and grades to date, statements relative to his academic proficiency from not fewer than ( ) of his college instructors, and a statement from his college assessing his potential strengths and weaknesses as exhibited in any previous field experiences or related training programs in classroom procedures or student relationships.

4. Consent

Each prospective cooperating teacher may accept or reject any student teacher. The teacher shall receive the request to take a student teacher at least ( ) weeks prior to the student's introduction to the classroom.

5. Released time

Each cooperating teacher shall be provided with released time with pay for attendance at regularly scheduled orientation and evaluation sessions sponsored by a student teacher's college or university.

6. Assignments

A cooperating teacher shall not involuntarily be given additional assignments outside of his regular responsibilities during the period he is supervising a student teacher.

7. Assuming responsibilities

The cooperating teacher and the student teacher shall assess the latter's readiness to assume teaching responsibilities and the cooperating teacher shall have authority for determining in what degrees those responsibilities shall be assumed.

8. Explanation of school personnel responsibilities

The superintendent, or his designee, shall arrange for other school personnel, including teachers, principal, remedial instructors, guidance counselors, curriculum coordinator, school psychologist, school nurse, and school social worker to assist the cooperating teacher in providing an understanding of their roles for the student teacher.

9. Materials and supplies

a. Upon request, a cooperating teacher shall be provided with a duplicate copy of all instructional materials and teacher manuals for use by the student teacher assigned.

b. Upon request, a cooperating teacher shall be provided with those school records which he feels necessary for an understanding of the field experience by the student teacher. Upon completion of the field experience, the cooperating teacher shall arrange with the student teacher for the return of all such copies of student records.

10. Eligibility to teach

A student teacher shall be permitted to teach unsupervised only in areas for which he will be eligible for certification and only after the approval of the cooperating teacher.

11. Substitution

In accordance with State regulations, a student teacher can not be used as a substitute teacher.

12. Information for cooperating teachers

The superintendent, or his designee, shall arrange for each cooperating teacher to be provided in writing with the following in accordance with college procedures:

a. Information about the student teacher, such as his background, college record, interests, talents, and special problems of which the cooperating teacher and school administrator should be aware.

b. Information about the college program and the college's expectations and requirements for student teachers.

c. Specific information about the date the student will begin the assignment, when he will complete the assignment, and holidays or special events which affect the student teacher's attendance.

13. Orientation

Prior to the commencement of the student teaching experience, the superintendent shall request that the prospective student teacher visit the School District for appropriate orientation by the superintendent or his designee and the cooperating teacher.

Article XXX, *Protection of Teachers, Students and Property*

A. Unsafe and Hazardous Conditions

Teachers shall not be required to work under unsafe or hazardous conditions or to perform tasks which endanger their health, safety, or well-being.

B. Procedure for Hazardous Conditions

When the Association makes a determination on a district-wide basis or a Faculty Council, as heretofore established in ARTICLE XXII, determines on a building basis that conditions are unsafe or hazardous for the health, safety, or well-being of students and teachers, the following conditions shall be established and exist until rescinded by the same body:

Paragraph G. deals with a demand that requires the board to negotiate the scheduling of nurses. The board must insist that such a question, is a matter for it to determine unilaterally. It represents a basic policy question and is not an item to be included in the terms and conditions of employment. N.J.S.A. 18A:40-1 et seq.

1. Meetings
In the event of any disorder or disruption in the regular school program, the Board, superintendent or affected building principals shall meet with the Association immediately on request of the Association to develop mutually acceptable programs to guarantee the safety of students, teachers, and property.

2. Association representatives
Representatives of the Association shall be allowed free access to buildings and teachers until conditions are no longer unsafe and hazardous.

3. Closings
The Association shall be consulted and be allowed to submit recommendations for consideration before any judgment is made to open or close school.

4. Unauthorized visitors
During said unsafe and hazardous period, persons not employed by the School District shall not be allowed into any school without the knowledge and permission of the senior faculty representative in a building. This shall apply to students visiting a school other than where they are assigned.

C. Reasonable Force
As specified in 18A:6-1, a teacher may, within the scope of his employment, use and apply such amount of force as is reasonable and necessary: To quell a disturbance threatening physical injury to others; to obtain possession of weapons or other dangerous objects upon the person or within the control of the pupil; for the purpose of self-defense; and for the protection of persons or property.

D. Action before Board or Commissioner
Whenever any action is brought against a teacher before the Board or before the Commissioner of Education of the State of New Jersey which may affect his employment or salary status, the Board of Education shall reimburse him for the cost of his defense if the action is dismissed or results in a final decision in favor of the teacher.

E. Assault

1. Legal assistance
The Board shall give full support including legal and other assistance for any assault upon the teacher while acting in the discharge of his duties.

2. Leave
When absence arises out of or from such assault or injury, the teacher shall be entitled to full salary and other benefits for the period of such absence but shall not forfeit any sick leave or personal leave.

3. Reimbursement for personal property damage
The Board shall reimburse teachers for the reasonable cost of any clothing or other personal property damaged or destroyed as a result of an assault suffered by a teacher while the teacher was acting in the discharge of his duties within the scope of his employment.

4. Medical
The Board shall reimburse a teacher for the cost of medical, surgical or hospital services incurred as the result of any injury sustained in the course of his employment.

5. Workmen's Compensation
Benefits derived under this or subsequent Agreements shall continue beyond the period of any Workmen's Compensation until the complete recovery of any teacher when absence arises out of or from assault or injury.

F. Reporting Assaults

1. Principal or immediate superior
Teachers shall immediately report cases of assault suffered by them in connection with their employment to their principal or other immediate superior.

2. Superintendent
Such notification shall be immediately forwarded to the superintendent who shall comply with any reasonable request from the teacher for information in the possession of the superintendent relating to the incident or the persons involved, and shall act in appropriate ways as liaison between the teacher, the police, and the courts.

G. Nurse
A school nurse shall be scheduled to be in each building for the entire school day as heretofore defined in ARTICLE VII, Section A of this Agreement.

prescribes the board's duties with respect to scheduling school nurses.

With respect to the remaining paragraphs in Article XXX, Title 18A of the New Jersey law imposes certain specific requirements and liabilities on the board. It should be emphasized again that the attempt to paraphrase the law, sections of the law, or intentions of the law, should not be agreed to. If it is deemed necessary to discuss or to quote the law, it must be done verbatim. Due to this aspect of this particular demand, the board should, with its attorney, carefully consider this specific proposal. More specifically, the terms unsafe or hazardous conditions which endanger "health safety or well being" is conspicuously vague. Does the lack of air conditioning endanger well being? It is important to note grievances may arise from such a provision and decisions flowing from such grievances may be beyond the ability of the board to comply without the expenditure of vast sums of money.

B.1. and 3. are restrictions upon the board which, themselves, could have tragic consequences if literally followed. There is no time during a bomb threat to negotiate with the union. The union negotiator might reply, "We obviously don't mean in that situation." The board has the obligation to protect students. It should not bind itself in any way which might endanger students or which might subject the board to arbitration because it or its administrative personnel sought to protect students and employees.

E.1. through 4. would be acceptable if they stipulated that such injury or legal proceeding was not determined to be the fault of the teacher.

Article XXXI, *Maintenance of Classroom Control and Discipline*

A. Definition of Responsibilities
A definition of the duties and responsibilities of all administrators, coordinators, supervisors and other personnel pertaining to student behavior shall be reduced to writing by the superintendent and presented to each teacher at the start of each school year.

B. Special Assistance
When, in the judgment of a teacher, a student requires the attention of the principal, assistant principal, a counselor, psychologist, physician or other specialist, he shall so

The board must retain the ultimate responsibility for the maintenance of control and discipline in the classroom. This is not an item that can be delegated to committees and it should not be negotiated. As stated previously, the use of committees could inform his principal or immediate superior. The principal or immediate superior shall arrange as soon as possible for a conference among himself, the teacher, and an appropriate specialist to discuss the problem and to decide upon appropriate steps for its resolution.

C. Disruptive Students
When, in the judgment of a teacher, a student is by his behavior seriously disrupting the instructional program to the detriment of other students, the teacher may exclude the student from the classroom and refer him to the principal. In such cases the principal shall arrange as soon as possible, and under normal circumstances not later than the conclusion of the following school day, a conference among himself, the teacher and possibly an appropriate specialist to discuss the problem and to decide upon appropriate steps for its resolution. If the teacher in question objects to the proposed readmission of said student to the classroom, the matter shall, within twenty-four (24) hours after the decision by the principal, be referred to an ad hoc committee consisting of two (2) members appointed by the principal, two (2) members appointed by the teacher and a fifth (5th) member, who shall act as chairman, appointed by the other four (4) members. Said committee shall consult with the teacher, the principal, and other appropriate professional and/or lay persons, including the student's parents and/or guardians, and shall render a final decision in the matter within ( ) days after the conclusion of such consultation.

D. Student Behavior Committee
As soon as possible after the execution of this Agreement, a joint Student Behavior Committee (consisting of ( ) members appointed by the superintendent and ( ) members appointed by the Association) shall be established to develop appropriate guidelines to be used by teachers in handling disruptive students and to develop constructive programs for disruptive students whose presence in regular classes represent unusual problems for the regular learning process. Recommendations shall be submitted to the Instructional Council established pursuant to ARTICLE XXIII of this Agreement.

E. Building Procedures
An appropriate student disciplinary procedure shall be developed for each school building by its Liaison Committee (established pursuant to ARTICLE XXII of this Agreement). Said procedure shall be submitted to the building faculty for approval prior to its implementation.

F. Expanded Involvement
Nothing in this ARTICLE pertaining to the development of guidelines and procedures by the Student Behavior Committee or each school's Liaison Committee shall be interpreted to prevent these committees from consulting or adding to their number such additional teachers, professional advisors, parents, students, or other persons as the original members herein designated shall determine are desirable and appropriate for said purposes.

Article XXXII, *Insurance Protection*

A. Full Health-Care Coverage
As of the beginning of the 19 - school year, the Board shall provide the health-care insurance protection designated below. The Board shall pay the full-premium for each teacher and in cases where appropriate for family-plan insurance coverage.

1. Provisions of coverage
Provisions of the health-care insurance program shall be detailed in master policies and contracts agreed upon by the Board and the Association and shall include:

a. Hospital room and board and miscellaneous costs
b. Out-patient benefits
c. Laboratory fees, diagnostic expenses, and therapy treatments
d. Maternity costs
e. Surgical costs
f. Major-medical coverage

2. Carrier(s)
The health insurance carrier(s) shall be for the basic hospitalization and medical-surgical coverage, and for the major-medical coverage.

3. Special program(s) and carrier(s)
In addition to the above stated program, provision shall be made to provide the following health programs:

a. Prescription drug costs
b. Dental care
c. Optical care

The Board shall make full payment for the services listed above in this paragraph with a carrier(s) approved by the Association.

4. Complete annual coverage
For each teacher who remains in the employ of the Board for the full school year, the Board shall make payment of insurance premiums to provide insurance coverage for the

be arranged on the basis of providing suggestions and advice, but the responsibility for making decisions must rest finally with the board.

The question with respect to the association's rights to negotiate the "carrier approved by the Association" is a matter that the board should reject as not an appropriate subject for negotiations. The board might properly negotiate the amount of insurance required and the kind of insurance that would be utilized. But is it the board's prerogative to make the determination as to the carrier that will be selected. The board might desire to place the proposal out for bids, and the board cannot be restricted from doing this.

The board should consider negotiating the "cost" of insurance programs rather than the "benefits" itself. For example, propose that the board pay the same amount in dollars that it paid for insurance in the previous school year. This would prevent the Board's automatic assumption of increasing insurance costs.

full twelve (12) month period commencing September 1st and ending August 31st. When necessary, payment of premiums in behalf of the teacher shall be made retroactively or prospectively to assure uninterrupted participation and coverage.

B. Retirement Coverage
The Board shall provide for continuance of health-care insurance after retirement on the terms detailed in the master policies and contracts agreed upon by the Board and the Association.

C. Description to Teachers
The Board shall provide to each teacher a description of the health-care insurance coverage provided under this ARTICLE, no later than the beginning of the 19 - school year, which shall include a clear description of conditions and limits of coverage as listed above.

D. Washington National Meetings
The superintendent shall permit representatives of the NJEA Washington National Income Protection Plan to meet with teachers for the purpose of enrolling new members and permitting present members to adjust their coverages at faculty meetings on a district or building level at the request of the Association. Requests for such meetings shall be made no more than once a year. It is agreed that the Washington National representative shall be permitted a minimum of twenty (20) minutes for the meeting.

Article XXXIII, *Personal and Academic Freedom*

A. Personal
The personal life of a teacher is not an appropriate concern or attention of the Board except as it may directly prevent the teacher from performing properly his assigned functions during the workday.

B. Citizenship
Teachers shall be entitled to full rights of citizenship, and no religious or political activities of any teacher or the lack thereof shall be grounds for any discipline or discrimination with respect to the professional employment of such teacher, providing said activities do not violate any local, state or federal law.

C. Academic
The Board and the Association agree that academic freedom is essential to the fulfillment of the purposes of the School District, and they acknowledge the fundamental need to protect teachers from any censorship or restraint which might interfere with their obligation to pursue truth in the performance of their teaching functions. Accordingly, they agree as follows:

1. Controversial material
Teachers shall be guaranteed full freedom in classroom presentations and discussions and may introduce politically, religiously or otherwise controversial material, provided only that said material is relevant to the course content.

2. Personal opinion
In performing their teaching functions, teachers shall be guaranteed full freedom in expressing their personal opinions on all matters relevant to the course content, provided, however, that when they do so they shall make every effort to indicate that they are speaking personally and not on behalf of the school, its administration, or the Board.

3. Censorship
Teachers shall not be censored or restrained in the performance of their teaching functions on the ground that the material discussed and/or opinions expressed are distasteful or embarrassing to those in authority in the school system or detrimental to school or school system public relations.

If it is agreed that Washington National representatives may conduct meetings in the school, such meetings should not constitute one of the meetings provided elsewhere in the contract. There is no reason why it should constitute a "faculty meeting." Because Washington National is, in effect, a subsidiary of NEA, it is advisable to allow meetings only outside of the school day. Certainly, teachers should not be compensated for their voluntary attendance at this meeting.

While it should not be the board's intention to in any way deprive a teacher of any of the rights that an individual, or an individual in the capacity of a teacher, is provided as a matter of law, this type of clause in the contract would be an inappropriate matter for the purpose of collective negotiations.

It should be noted, however, that the provision of this demand contained in paragraph A, which states that the personal life of a teacher is not an appropriate concern of the board, is not a sufficiently clear statement. The board must have a definite and distinct interest in the personal life of a teacher as it might bear upon his or her suitability for teaching in the district.

Under paragraph C., the introductory paragraph can be considered as a preamble and should be rejected.

With respect to paragraph C., clause 1., the following additions are suggested:

Both sides of the controversial issue or material shall be presented to the pupils fairly and honestly. The individual teacher shall be responsible for any abuse of his or her constitutional rights of liberty of speech.

With respect to paragraph C., clause 2., the classroom should not and must not be permitted to be used as a private forum for the sounding off of personal opinions. Conceivably, if all sides of a controversial issue are honestly and fairly presented, there appears to be no need for the infusion of personal opinions designated as such.

Paragraph C., clause 3., should not

Article XXXIV, *Books and Other Instructional Materials and Supplies*

A. Purpose

The Board shall allocate sufficient funds to provide for the purchase and/or replacement of textbooks, library books, instructional materials, supplies and equipment of sufficient quality and quantity to enable teachers to properly fulfill their teaching responsibilities. Specifically, the Board agrees that during the 19 - school year it shall provide the following allocations:

1. Per pupil costs

Funds for instructional materials and supplies shall be increased by not less than ($) dollar(s) per pupil for kindergarten through sixth grade and by not less than ($) dollar(s) per pupil for seventh grade through twelfth grade. Teachers purchasing materials and/or supplies with the advance approval of their principal or immediate superior shall be reimbursed upon submission of an appropriate receipt of purchase.

2. Home instruction

($) dollars per home instructor shall be used to purchase additional materials and supplies necessary in carrying out the instructional program. Such teachers shall be reimbursed up to said amount upon submission of an appropriate receipt of purchase.

3. Petty cash

A Petty Cash Fund shall be established in each building for use in purchasing incidental supplies for classroom instructional use. Expenditures from this fund shall be at the discretion of the teacher. The teacher shall be reimbursed upon presentation of a paid receipt for such expenditures to the principal, up to the following maximums.

a. Secondary schools – ($) dollars per teacher per month
b. Elementary schools – ($) dollars per teacher per month

B. Review and Evaluation of Books and Materials

1. Procedure

An improved procedure for reviewing and evaluating books and other instructional materials and supplies shall be instituted as soon as possible after the effective date of this Agreement. Said procedure shall provide, among other things, for the following:

a. A separate committee shall be established to make recommendations for each subject area;
b. School-based teachers shall constitute a majority of each such committee;
c. A subject supervisor shall not be able to override the recommendations of such committee;
d. The recommendations of each such committee shall be published and distributed to all schools; and
e. The distinction between books adopted for system-wide use and those for which there is freedom for individual school and/or teacher choice shall clearly be defined.

2. Textbook Policy Committee

A Textbook Policy Committee (consisting of ( ) members appointed by the superintendent and ( ) members appointed by the Association) shall be established as soon as practicable to work out the mechanics of the aforesaid procedure so that it may be implemented by the beginning of the 19 - school year.

3. Pay and/or released time

Teachers serving on committees organized pursuant to this ARTICLE shall be provided with scheduled released time for this purpose and/or paid at the rate specified in ARTICLE VII, Section A, paragraph 4 of this Agreement, for time spent in excess of the regularly scheduled in-school work year or workday.

C. Standards for Materials

1. Criteria

Instructional materials used in the School District shall reflect the multi-ethnic nature of our society and shall evidence a sensitivity to prejudice, to stereotypes, and to materials offensive to minority groups, as measured by the following criteria:

a. The suggestion, by omission or commission or by over- or under-emphasis, that any racial, religious, or ethnic segment of the population is more or less capable or more or less important than any other in the mainstream of American life is to be avoided.

b. Opportunities for full, fair, accurate, and balanced treatment of minority groups should be utilized.

c. Recognition of minority groups by frequent placement in positions of leadership and centrality is necessary.

be negotiated, but rather could be included in board policy.

Paragraph A. states the standard for the purchase and replacement of books, supplies, etc., in that they be of a sufficient quality and quantity to "enable teachers to properly fulfill their teaching responsibilities." What are "sufficient quality and quantity?"

The Instructional Council, if advisory, may be of some value. However, the "approval" of tests, materials, and criteria should remain with the board upon advice from the administration.

It may be argued that disagreements in this article will be arbitrated. No board should allow the intrusion of an arbitrator into the area of selection of textbooks and materials.

d. Both male and female members of minority groups should be depicted in situations which exhibit them as worthy examples of mature American citizens.

e. Attention should be given to the presentation of fully integrated human groupings and settings indicating equal status.

f. The group representation of individuals should be clearly apparent and the exclusive utilization of Caucasian facial features avoided in such representation where appropriate.

g. Broad-ranging, well-planned, and comprehensive materials which represent the contribution and achievements of minority groups in art, science, history, literature, and all other aspects of life and culture should be apparent in the design of materials.

h. Life in contemporary urban environments, as well as rural and suburban environments, should be pictured.

2. Materials Center

A materials center shall be maintained and charged with the responsibility of seeking multi-ethnic materials related to study units being taught. The center shall also develop and maintain a current list of resource centers and persons within and outside the community.

D. Testing

Achievement tests which are to be used by the School District for district-, school-, subject, or grade-wide purposes shall be approved in advance by the Instructional Council as heretofore established in ARTICLE XXIII of this Agreement. The Instructional Council shall consider the kind and type of test, the use to which a test is to be put, and the dissemination of the test results and any interpretation of those results.

Article XXXV, *Deduction from Salary*

A. Association Payroll Dues Deduction

1. The Board agrees to deduct from the salaries of its teachers dues for the Association, the County Education Association, the New Jersey Education Association or the National Education Association, as said teachers individually and voluntarily authorize the Board to deduct. Such deductions shall be made in compliance with Chapter 233 N. J. Public Laws of 1969 (NJSA 52:14-15.9e) and under rules established by the State Department of Education. Said monies together with current records of any corrections shall be transmitted to such person as may from time to time be designated by the Association by the 15th of each month following the monthly pay period in which deductions were made. The person designated shall disburse such monies to the appropriate association or associations.

2. Each of the associations named above shall certify to the Board, in writing, the current rate of its membership dues. Any association which shall change the rate of its membership dues shall give the Board written notice prior to the effective date of such change.

B. Local, State and National Services

The Board agrees to deduct from teachers' salaries money for local, state and/or national association services and programs as said teachers individually and voluntarily authorize the Board to deduct and to transmit the monies promptly to such association or associations. Any teacher may have such deductions discontinued at any time upon sixty (60) days' written notice to the Board and the appropriate association.

Article XXXVI, *Miscellaneous Provisions*

A. Nondiscrimination

The Board and the Association agree that there shall be no discrimination, and that all practices, procedures, and policies of the school system shall clearly exemplify that there is no discrimination in the hiring, training, assignment, promotion, transfer, or discipline of teachers or in the application or administration of this Agreement on the basis of race, creed, color, religion, national origin, sex, domicile, or marital status.

B. Board Policy

This Agreement constitutes Board policy for the term of said Agreement, and the Board shall carry out the commitments contained herein and give them full force and effect as Board policy.

D. will place control of testing solely in the hands of the Instructional Council, an unwarranted delegation of educational policy-making.

There are only two mandatory requirements in the law with respect to deduction of dues for employee organizations. First, any one employee can have his dues deducted for only one grouping of employee organizations, such as the local association, the NJEA, the NEA. Under no circumstances, can the teacher have dues deducted for two separate and distinct employee organizations, such as the AFT and NEA. The second mandatory feature of the law is the requirement that notice of withdrawal is effective on January 1 and July 1 next succeeding the date of which notice of withdrawal is filed.

Paragraph A. is an attempt to paraphrase and restate certain aspects of laws dealing with discrimination. It must again be emphasized that the board should not agree to the paraphrasing or restatement of the law. If indeed the law must be incorporated in the contract, it should be stated verbatim.

Paragraph B. is a superfluous paragraph that simply states that the board must carry out the commitments contained in the contract and gives them the effect of board policy. It is, of course, the intention of the board, as well as the association, to adhere to the provisions of the con-

C. Savings Clause
Except as this agreement shall otherwise provide, all terms and conditions of employment applicable on the signing date of this Agreement to employees covered by this Agreement as established by the rules, regulations and/or policies of the Board Administrative procedures and practices in force on said date, shall continue to be so applicable during the terms of this agreement. Unless otherwise provided in this Agreement,nnothing contained herein shall be interpreted and/or applied so as to eliminate, reduce, or otherwise detract from any teacher benefit existing prior to its effective date.

D. Separability
If any provision of this Agreement or any application of this Agreement to any employee or group of employees is held to be contrary to law, then such provision or application shall not be deemed valid and subsisting, except to the extent permitted by law, but all other provisions or applications shall continue in full force and effect.

E. Compliance between Individual Contract and Master Agreement
Any individual contract between the Board and an individual teacher, heretofore or hereafter executed, shall be subject to and consistent with the terms and conditions of this Agreement. If an individual contract contains any language inconsistent with this Agreement, this Agreement, during its duration, shall be controlling.

F. Printing Agreement
Copies of this Agreement shall be printed at the expense of the Board after agreement with the Association on format within thirty (30) days after the Agreement is signed. The Agreement shall be presented to all teachers now employed, hereafter employed, or considered for employment by the Board.

G. Notice
Whenever any notice is required to be given by either of the parties to this Agreement to the other, pursuant to the provision(s) of this Agreement, either party shall do so by telegram or registered letter at the following addresses:

1. If by Association, to Board at
(address)
2. If by Board, to Association at
(address)

Article XXXVII, *Duration of Agreement*

A. Duration Period
This Agreement shall be effective as of **[Date of implementation]** and shall continue in effect until **[Date of expiration]** ,

[NOTE – In Agreements which extend for more than one (1) year and negotiations over fiscal matters are to be conducted annually, insert the phrase:
subject to the Association's right to negotiate each annual budget with negotiations commencing no later than October 1 of each year, under procedures defined in ARTICLE II, and . . .]

subject to the Association's right to negotiate over a successor Agreement as provided in ARTICLE II. This Agreement shall not be extended orally, and it is expressly understood that it shall expire on the date indicated, unless it is extended in writing.

B. Status of Incorporation
Option 1 [For Unincorporated Local Association]
In witness whereof the parties hereto have caused this Agreement to be signed by

tract. This paragraph should be deleted.

Paragraph C. is not a "savings clause." (See commentary on Article IV, B. "*Statutory Savings Clause*" earlier). Rather, it is a clause which retains all possible benefits from any source to employees and is commonly called a past practice clause. This type of provision can be extremely detrimental to a board and should be avoided. If included in the agreement, the result would be to include by reference in the contract all pre-existing "rights" provided or presumed in statutes, policies, administrative decisions or even practices of individual administrative personnel. (See **Past Practices**, earlier.)

These are standard clauses.

If the contract is going to exist for a particular period of time, but certain specific items, i.e., salaries, are to be negotiated during the course of the duration of the remainder of the contract, it should be specifically so stated in a reopener clause. There should be no vagueness whatsoever with respect to these matters.

their respective presidents, attested by their respective secretaries, and their corporate seals to be placed hereon, all on the day and year first above written.

ASSOCIATION	BOARD OF EDUCATION
By **Its President**	By Its Secretary
By **Its President**	By Its Secretary

Option 2 [For Unincorporated Local Assistance]

In witness whereof the parties hereto have caused this Agreement to be signed by president and secretary and the Board has caused this Agreement to be signed by its president, attested by its secretary and its corporate seal to be placed hereon, all on the day and year first above written.

ASSOCIATION	BOARD OF EDUCATION
By **Its President**	By Its Secretary
By **Its President**	By Its Secretary